MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into by and between Acalvio Technologies, Inc., a Delaware corporation with its principal place of business located at 2520 Mission College Boulevard, Suite 110, Santa Clara, CA 95054 ("Acalvio") and [insert Customer name], a [state and type of corporation] with its principal place of business located at [insert address] ("Customer") effective as of [insert date] ("Effective Date"). Acalvio and Customer shall individually be referred to as a "Party" and collectively as the "Parties."

In consideration of the mutual representations, warranties, and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1) **Definitions**. The following terms shall be capitalized throughout this Agreement and shall be defined as follows:
   a) **Authorized Users**. The term "Authorized Users" means Customer's designated administrator(s), employees and other personnel authorized to access the Services.
   b) **Customer Data.** The term "Customer Data" refers to any data, content, or other information made available to Acalvio or otherwise processed by Acalvio on behalf of Customer in connection with the Services.
   c) **Documentation.** "Documentation" means any documentation, whether in electronic or printed format, provided by Acalvio to Customer that are identified as, or intended to be, user manuals or videos and describe the features, functions and operation of the Services.
   d) **Hardware.** The term "Hardware" means any physical equipment supplied to Customer in connection with certain Acalvio Services and/or appliances, or other tangible computing devices that are pre-installed with Acalvio Software, designed to operate in conjunction with the Services and licensed to Customer as part of the Services pursuant to an applicable Order Form.
   e) **Order Form**. The term "Order Form" means the pricing proposal, quote or other order form setting forth the commercial terms of the Services which forms a part of this Agreement.
   f) **Order Term**. The term "Order Term" means the Services subscription term of any Order Form, as set forth in the Order Form.
   g) **Personal Data**. The term "Personal Data" means any information relating to an identified or identifiable natural person. For the avoidance of doubt, Personal Data includes personally identifiable information and personal information as defined by applicable data privacy and protection laws, including, but not limited to, without limitation, the California Consumer Privacy Act of 2018 (as amended by the California Privacy Rights Act of 2020) (collectively, the "CCPA"), and the Virginia Consumer Data Protection Act of 2021, as amended, VA Code Title 59.1 a chapter numbered 52, consisting of sections numbered 59.1-571 through 59.1-581 ("VCDPA"); c) the Colorado Privacy Act and its implementing regulations ("CPA"); (d) the Utah Consumer Privacy Act ("UCPA"); (e) Connecticut SB6, An Act Concerning Personal Information Privacy and Online Monitoring ("CTDPA"); (f) any other applicable laws, rules, orders or regulations related to the protection of Personal Data in the United States that is already in force or that will come into force during the term of this Agreement, and the General Data Protection Regulation (EU) 2016/679 ("GDPR"), with respect of the UK, the GDPR as saved into United Kingdom law by virtue of section 3 of the United Kingdom's European Union (Withdrawal) Act 2018 ("UK GDPR") and the Data Protection Act 2018 (together, "UK Data Protection Laws"), (iii) the Swiss Federal Data Protection Act and its implementing regulations ("Swiss DPA"), in each case, as may be amended, superseded or replaced.
   h) **Services.** The term "Services" means the ShadowPlex cloud-based software as a service (the "ShadowPlex Cloud Services") product, the ShadowPlex software license (the "ShadowPlex Software Services") product, implementation and/or support services as specified in each applicable Order Form.
   i) **Usage Data**. The term "Usage Data" means any anonymized, aggregated, statistical and/or other benchmark data generated by Acalvio in connection with Customer's use of the Services. For the avoidance of doubt, Usage Data shall not contain or include personally identifiable information.
2) **Access and Use of the Services**.
   a) During the Order Term, and solely to the extent specified in the applicable Order Form, Acalvio grants to Customer a non-exclusive, non-transferable, non-sublicensable, non-assignable (except as otherwise permitted pursuant to Section 24(f)), worldwide right to (a) access and utilize the ShadowPlex Cloud Services, and/or (b) license to use

and copy (in object code only) the ShadowPlex Software Services for Customer's internal use in connection with its ordinary business operations, in accordance with the terms of this Agreement and applicable Order Form.

b) To the extent any Hardware is supplied by Acalvio as part of the Services, such Hardware is licensed, not sold, to Customer for Customer's internal use only during the Order Term. Upon termination or expiration of any applicable Order, Customer shall return the Hardware to Acalvio in the same condition as received, reasonable wear and tear excepted. Customer shall bear the cost of returning the Hardware, including any necessary insurance to cover potential damage or loss during transit. Failure to return the Hardware in accordance with this provision shall entitle Acalvio to charge Customer for the then-current market value of the Hardware, in addition to any other rights or remedies available to Acalvio under this Agreement or at law.

c) Notwithstanding any language in this Agreement that may suggest otherwise, it is expressly understood and agreed that any reference to the terms "purchase," "sold," or any similar terms shall not imply or confer any transfer of ownership rights in any Services or Hardware provided under this Agreement. All Services and Hardware made available to Customer under this Agreement are provided solely on a license basis.

3) **Authorized Users**. Access by Authorized Users shall be subject to the terms and conditions of this Agreement. Customer and its Authorized Users shall safeguard account access credentials. Customer will promptly notify Acalvio in the event of any unauthorized use of access credentials or any breach of the security of such credentials.

4) **Professional Services**. Professional Services will be provided by Acalvio to Customer as described in any Order Form (as may be further elaborated in any statement of work) including, as applicable, implementation and training services.

5) **Support Services**. During each applicable Order Term, Acalvio will, in accordance with the terms of **Exhibit A**, attached hereto and hereby expressly incorporated by reference, provide Customer with (a) support services which correspond to the level of support services purchased by Customer as specified in the applicable Order Form, and (b) applicable service level availability.

6) **Usage Data.** In the course of providing the Services, Acalvio may also collect, use, process and store Usage Data in order to create and compile anonymized and aggregated statistics about ShadowPlex Cloud Services and ShadowPlex Software Services. Acalvio will have the right to use such data in any manner, including, without limitation, for diagnostic or system monitoring purposes, subject only to the confidentiality obligations of Section 13.

7) **Promotional Rights.** Customer grants to Acalvio a non-exclusive license to use Customer's name and logo for the limited purpose of marketing and promoting the Services. Acalvio shall comply with Customer's trademark and brand guidelines in connection with such use. This promotional license may be terminated at any time by the Customer upon providing seven (7) days' written notice to support@acalvio.com.

8) **Customer Feedback**. Customer grants to Acalvio a limited, non-exclusive, non-sublicensable, non-transferable, non-assignable (except as otherwise permitted pursuant to Section 24(f)), royalty-free license to collect, process, store, use, display, distribute, and disseminate any suggestions or ideas, whether solicited or unsolicited (collectively, the "Feedback"), submitted to Acalvio, provided however, that any public disclosure of Feedback shall not include any Customer Personal Data or Customer Confidential Information.

9) **Licenses; Reservation of Rights.**

a) **Customer Data.** Customer grants to Acalvio a non-exclusive license to use Customer Data as necessary for purposes of providing the Services during each Order Term. Except for the limited license granted herein, Customer retains all right, title and interest, including, without limitation, all intellectual property rights, in and to any Customer Data.

b) **Acalvio Intellectual Property**. Acalvio has and will retain all right, title and interest, including, without limitation, all intellectual property rights, in and to the Documentation, Acalvio Confidential Information, Services, Usage Data, and all source code and object code related thereto, and all copies, modifications and derivative works thereof. Any and all rights not expressly granted herein by Acalvio are reserved by Acalvio.

c) **Use Restrictions**. Customer will not use the Services, Documentation or Acalvio Confidential Information to develop, directly or indirectly, any product or application that is similar to or competitive with any Acalvio product or service, Acalvio will not use the Services for evaluation, benchmarking or other comparative analysis without Acalvio's prior written consent. Customer will not distribute, redistribute, disseminate, resell, or sublicense the Services and Documentation, or use the Services on behalf of any third party, including as part of a time-sharing, outsourcing or service bureau environment. Customer will not, directly or indirectly, alter or modify the Services, or reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how, algorithms, or software related to the Services.   Customer will not make unauthorized copies of the ShadowPlex Software Services or remove or modify any proprietary notices, labels or marks on or in the ShadowPlex Software Services.

10) **Term; Renewal**. This Agreement commences on the Effective Date and shall continue until all Order Forms hereunder have expired or have been terminated pursuant to the terms of this Agreement. Each Order Term shall automatically renew for subsequent Order Term(s), unless either Party provides written notice of termination thirty (30) days prior to the expiration of the initial, or any renewal, Order Term. All fees required for renewal of an Order Term will be reflected in a quotation issued by Acalvio in advance of the expiration of the current Order Term. Fees for any subsequent renewals shall be set at the then-current Acalvio list price, unless otherwise stated on the Order.

11) **Fees**.

a) **Payment**. All fees due under this Agreement shall be invoiced and paid in U.S. dollars in accordance with the terms set forth in the applicable Order Form.

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

c) **Late Payments**. Acalvio reserves the right, upon ten (10) days prior written notice, to suspend or terminate services for payments that are more than **thirty (30) days** past due. Past due payments will accrue interest at the lesser of 1.5% monthly or the highest interest rate allowable under applicable law.

d) **Taxes**. Customer is responsible for paying any applicable taxes, excluding taxes based solely on Acalvio's net income, including, but not limited to, governmental sales, use, value-added, commodity, harmonized, GST, consumption tax, service tax or other similar taxes imposed on in connection the fees paid for the Services. To the extent Acalvio is required to collect such taxes, the applicable tax will be invoiced to Customer and paid pursuant to the applicable Order Form payment terms.

e) **Non-Refundable**. Except in the event of Acalvio's uncured material breach or as otherwise set forth in this Agreement, (i) fees will not be prorated upon cancellation or early termination of this Agreement, and (ii) all fees paid through the date of termination are nonrefundable.

12) **Security.** Acalvio implements and will maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Services and Customer Data in accordance with industry standard security requirements.

13) **Confidentiality & Non-Disclosure.**

a) **Confidential Information.** The Parties acknowledge that during the performance of this Agreement, each Party may have access to the other Party's Confidential Information. "Confidential Information" means all nonpublic information or material which is disclosed to the other party, whether in oral and/or written form, that (i) relates to past, present and future research, development, business activities, trade secrets, products, services, and proprietary software; or (ii) has been either identified, orally or in writing, as confidential or would be understood to be confidential by a reasonable person under the circumstances. All Customer Data shall constitute Customer's Confidential Information.

b) **Use; Non-Disclosure Obligation**. Each Party agrees to use the Confidential Information solely for the purposes of performing its obligations under this Agreement. Neither Party shall disclose any Confidential Information of the other Party to any third party without the disclosing Party's prior written consent, except as necessary to comply with the law, a court order, or a subpoena, or to their respective personnel or agents (i) who have a need to know about such information in order to fulfill their obligations under this Agreement, (ii) who are subject to written confidentiality agreements with terms at least as restrictive as the terms contained herein, and (iii) who have been informed of the confidential nature of the information. Each Party shall be liable for any breach of confidentiality by its personnel or agents as if such breach had been committed by the Party itself.

c) **Required Disclosure**. In the event the receiving Party is requested or required by legal process to disclose any of the Confidential Information, the receiving Party shall give the disclosing Party prompt written notice so that the disclosing Party may seek a protective order or other appropriate relief prior to any such disclosure. In the event that such protective order is not obtained, the receiving Party shall disclose only that portion of the Confidential Information that its legal counsel advises that it is legally required to disclose, and shall work with the disclosing Party to minimize the extent and effect.

d) **Injunctive Relief**. Each Party understands and agrees that monetary damages will not be a sufficient remedy for any breach of either Party's confidentiality obligations under this Section, and that the non-breaching Party shall be entitled to seek equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies will not be deemed to be the exclusive remedies, but will be in addition to all other remedies available at law or in equity.

e) **Return or Destruction of Confidential Information**. Upon either Party's written request at any time, or upon termination or expiration of this Agreement, and subject to any contrary obligations under applicable law, the other Party shall, at the requesting Party's option, return or destroy all of the requesting Party's Confidential Information and, if requested by the requesting Party, certify in writing that it has complied with the foregoing.

14) **Privacy.** Each Party shall be responsible for ensuring their respective compliance with any and all privacy, notice and consent rules or regulations and/or data collection laws or regulations applicable to its use of the Services and the performance of its obligations under this Agreement.

a) Acalvio shall not use or disclose Personal Data submitted by Customer or its Authorized Users for any purpose other than for providing the Services. Acalvio shall not: (i) sell the Personal Data; or (ii) retain, use, or disclose the Personal Data outside of the direct business relationship between the Parties. Except to the extent permitted by applicable law, Acalvio shall not combine the Personal Data received from Customer with other Personal Data it receives from or on behalf of another person or entity or collects from its own interactions. Acalvio shall notify Customer if at any time it can no longer meet its obligations under applicable laws. Acalvio certifies that it understands and will comply with the restrictions set forth in this Agreement and any applicable Data Processing Addendum executed by the Parties hereto and expressly incorporated herein.

b) For purposes of compliance with GDPR, as applicable, each Party, in its respective role as a data controller or data processor, shall comply with all applicable data protections laws and regulations and the obligations set forth within a Data Processing Addendum executed by the Parties in connection with this Agreement. In relation to all such Personal Data: (i) Acalvio acknowledges that Customer is the data controller of such data and that Acalvio is only acting on Customer's behalf as the data processor, and (ii) Acalvio shall process such Personal Data solely in accordance with applicable privacy laws and Customer's written instructions for the purposes of providing the Subscription Services in accordance with the Agreement and for no other purposes. Each Party agrees that Customer's use of the Services to process such Personal Data shall be deemed a written instruction to Acalvio to process such Personal Data.

15) **Representations and Warranties**.

a) Each Party represents and warrants that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, possesses all the necessary authority to enter into and perform its obligations under this Agreement, and that the execution of this Agreement and the performance of its obligations hereunder do not and will not violate any other agreement to which it is a party.

b) Acalvio warrants that (i) the Services will materially conform to the specifications detailed in the Documentation provided by Acalvio to Customer; (ii) Acalvio will use commercially reasonable efforts consistent with prevailing industry standards to maintain the Services free of any viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents, or programs (hereinafter "Malicious Code"); and (iii) the Professional Services will be performed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. Acalvio's sole and exclusive liability, and Customer's sole and exclusive remedy, shall be as follows: (a) for a breach of warranty under clause (i), Acalvio will, at its own expense and discretion, either repair or replace the ShadowPlex Services or ShadowPlex Software Services so that it conforms to the Documentation; (b) for a breach of warranty under clause (ii), Acalvio will use commercially reasonable efforts to remove the Malicious Code; and (c) for a breach of warranty under clause (iii), Acalvio will re-perform the Professional Services at no additional charge to Customer.

16) **Compliance with Applicable Laws**. Each Party shall comply with all state and federal laws or regulations applicable to the performance of its obligations under this Agreement. Customer shall not allow any third party to, export from the United States or allow the re-export or re-transfer of any part of the Services: (a) to any country or territory subject to export control embargo or economic sanctions implemented by any agency of the U.S. Government; (b) to any person or entity on any of the U.S. Government's Lists of Parties of Concern or otherwise in violation of any export or import laws, regulations or requirements of any United States or applicable foreign agency or authority.

17) **Termination**.

a) **Breach**. Either Party may terminate this Agreement immediately if the other Party breaches any material provision of this Agreement and, if such breach is curable, fails to cure such breach within **thirty (30) days** after receiving written notice of such breach.

b) **Automatic Termination**. This Agreement shall terminate upon written notice by either Party (i) upon the institution by or against either Party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of either Party's debts, (ii) upon either Party making an assignment for the benefit of creditors, or (iii) upon either Party's dissolution or ceasing to do business.

    c) **Survival**. The following Sections survive termination of this Agreement: Individual Binding Arbitration, Promotional License, Customer Feedback License, Reservation of Rights, Confidentiality & Non-Disclosure, Disclaimer of Warranties, Indemnity, Limitation of Liability, and Choice of Law.

18) **Individual Binding Arbitration**. Any claim or controversy arising out of or relating to the Services, and/or this Agreement (including its formation, interpretation, performance and breach) shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, ***excluding any rules or procedures governing or permitting class actions.*** Any judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Federal Arbitration Act shall govern the interpretation and enforcement of this Agreement.

19) **Future Functionality.** Customer's execution of this Agreement and use of the Services is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Acalvio regarding future functionality or features.

20) **DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY STATED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW**, THE SERVICES ARE PROVIDED ON AN "**AS IS**" AND "**AS AVAILABLE**" BASIS. **TO THE EXTENT PERMITTED BY APPLICABLE LAW**, ACALVIO EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE.

21) **LIMITATION OF LIABILITY**. EXCEPT WITH RESPECT TO A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR CUSTOMER'S VIOLATION OF SECTION 9(C) (USE RESTRICTIONS), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOST REVENUE, LOST PROFITS, LOST DATA, LOSS OF GOODWILL, REPLACEMENT GOODS OR SERVICES, LOSS OF TECHNOLOGY) ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH RESPECT TO A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR CUSTOMER'S VIOLATION OF SECTION 9(C) (USE RESTRICTIONS), IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY, OR THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER TO ACALVIO IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

22) **APPLICABILITY OF DISCLAIMERS AND LIMITATION OF LIABILTY**. THE DISCLAIMERS OF WARRANTY, LIMITATIONS OF LIABILITY, AND OTHER PROVISIONS STATED HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND APPLY REGARDLESS OF WHETHER ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

23) **INDEMNITY.**

    a) **By Acalvio.** Except to the extent any claim results from the gross negligence or willful misconduct of Customer, Acalvio agrees to indemnify, defend and hold harmless Customer, and its subsidiaries, officers, directors, shareholders, employees, and each of their respective successors and assigns from and against all damages, losses, liabilities, expenses, fees or costs (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with a third party claim alleging that the Services infringes or misappropriates any third party trademarks, copyrights, U.S. patents or other third party intellectual property rights. If a claim of infringement or misappropriation under this Section occurs, or if Acalvio reasonably determines that such a claim is likely to occur, Acalvio shall, at its option: (i) obtain a right for Customer to continue using the Acalvio Services for no additional fee; (ii) modify the Acalvio Services to make it and/or them non-infringing; (iii) replace the Acalvio Services with a non-infringing replacement with materially equivalent functionality, features, and performance; or (iv) terminate this Agreement and refund on a pro rata basis any unused fees paid by Customer. Acalvio will not have any indemnification obligation for a claim of infringement or misappropriation to the extent such claim would not have occurred but for (x) Customer Data, (y) any combination or use of the Services with any other product or system or technologies not supplied or approved by Acalvio, and/or (z) any refusal by Customer to accept or use a materially equivalent non-infringing replacement. The remedies provided herein shall be the sole and exclusive legal remedies of Customer for any claim of infringement of the Services.

    b) **By Customer**. Except to the extent any claim results from the gross negligence or willful misconduct of Acalvio, Customer agrees to indemnify, defend and hold harmless Acalvio, and its subsidiaries, officers, directors,

shareholders, employees and each of their respective successors and assigns from and against all damages, losses, liabilities, expenses, fees or costs (including, without limitation, reasonable attorneys' fees and costs) incurred in connection with any third party claim arising out of or relating to any claim that the Customer Data violates any third party intellectual property, privacy or other right.

c) **Notice.** A Party's indemnification obligations under this Agreement are conditioned on the indemnified Party providing prompt written notice to the indemnifying Party of any claim, action, or demand for which indemnification is claimed, provided, however, that any delay in such notice will relieve the indemnifying Party of its indemnification obligations only to the extent such delay materially prejudices the indemnifying Party's defense. The indemnifying Party shall be entitled to assume control of the defense and any settlement negotiations. In the event the indemnifying Party assumes control of the defense and negotiations, the indemnified Party shall be entitled, at its sole cost and expense, to participate in the defense and negotiations. In the event the indemnifying Party does not assume control of the defense and negotiations, then the indemnified Party may take control of the defense and negotiations, and its reasonable costs and expenses shall be subject to indemnification. The indemnified Party will reasonably cooperate, at the indemnifying Party's expense, in the defense of such claim as the indemnifying Party may request. The indemnifying Party will not enter into or agree to any settlement that requires any action or admits any liability by the indemnified Party or imposes any restrictions on the indemnified Party, in each case without the prior written consent of the indemnified Party, such consent shall not unreasonably be withheld.

24) **Miscellaneous.**

a) **Force Majeure.** Any delay in the performance of any duties or obligations of a Party will not be considered a breach of this Agreement if the delay is caused by an event beyond its reasonable control, including, without limitation, adverse weather conditions, internet outage or interruption of service, telecommunications or power outage, fire, flood, civil disobedience, labor disruptions, strikes, lockouts, freight, government ordered closures, pandemic, embargoes, terrorism, natural disaster, denial of service attacks, war or acts of God, or any other event beyond the reasonable control of the Party.

b) **Independent Contractors.** The Parties to this Agreement are independent contractors. This Agreement does not create a relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party has the authority to bind the other or incur obligations on the other's behalf without the other Party's prior written consent.

c) **Severability.** The validity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

d) **Modifications**. No modification of this Agreement shall be effective unless it is in writing and signed by an authorized representative of each Party.

e) **Choice of Law**. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California without regard to or application of California's conflict of law principles. The Parties consent to the jurisdiction of the State of California, County of Santa Clara, with regard to any controversy or claim arising out of or relating to this Agreement, or the breach thereof. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

f) **Assignment.** Neither Party shall assign any of the rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not unreasonably be withheld. However, consent is not required for an assignment of this Agreement in connection with a change of control, merger, stock transfer, sale or other disposition of substantially all the assets of the assigning Party's business.

g) **Successors and Assigns**. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.

h) **No Waiver**. No failure or delay by a Party exercising any right, power or privilege under this Agreement will operate as a waiver thereof.

i) **Interpretation**. Headings are for reference purposes only and do not limit the scope or extent of such section.

j) **Notices.** All notices required or permitted to be given under this Agreement will be in writing and delivered to: **Acalvio at 2520 Mission College Boulevard, Suite 110, Santa Clara, CA 95054 and legal@acalvio.com** and to Customer at the address and email provided in the Order Form.

k) **United States Government Users**. ShadowPlex Cloud Services and ShadowPlex Software Services are commercial computer software as defined in FAR 2.101. Any related documentation, technical data, or services are also commercial. In accordance with FAR 12.212 and DFARS 227.7202, all rights conferred in ShadowPlex Cloud Services and ShadowPlex Software Services, related documentation, technical data, services, or any deliverable to

the United States Government are specified in this Agreement. All other uses are prohibited and no ownership rights are conferred.

l) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall be deemed a single agreement.

m) **Execution**. Either Party may execute this Agreement with either a manual or digital signature. "Digital signature" means an electronic identifier that is intended by the Party using it to have the same force and effect as the use of a manual signature. A signed copy of this Agreement delivered via facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement.

25) **Entire Agreement**. This Agreement and the applicable Order Form comprises the entire agreement between the Parties and supersedes all prior or contemporaneous agreements, written or oral, between the Parties regarding the subject matter contained herein.

The Parties have caused their duly authorized representatives to execute this Agreement as of the dates set forth below.

Acalvio Technologies, Inc.:   **Customer:**

_____   _____
Signature   Signature

_____   _____
Name   Name

_____   _____
Title   Title

_____   _____
Date   Date

EXHIBIT A [<mark>OPTION #1 CLOUD SERVICES ONLY</mark>]

ShadowPlex Cloud Services Support and Availability

I.   SUPPORT REQUESTS AND SEVERITY LEVELS

Customer will appoint a single support liaison (and one backup) to communicate with Acalvio support.

Acalvio will not be obligated to answer support inquiries from any other contact.

Any support request must be submitted either within the customer support portal at support.acalvio.com or by email at support@acalvio.com. Each incident will be issued a ticket number by Acalvio. Any follow up calls by Customer must include the applicable ticket number.

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

All support requests will be categorized by Acalvio according to the following table. Acalvio will use its best efforts to respond to these requests in accordance with the support hours and response times specified below that correspond to the support package purchased by Customer as detailed in the Order Form.

Severity Level	Definition	Examples
P1	A service failure or severe degradation. Customer is unable to access any business resources or users are unable to access a critical business application	ShadowPlex is down and not accessible by users. ShadowPlex is slowed to such a degree that multiple users cannot log in, resulting in consistent "page not found errors" or similar. All deceptions are not functional
P2	A partial service failure or mild degradation. Customer is able to access some, but not all business resources. Non-production instance of the service is unavailable. Bug creating significant impact to existing service or application integration.	Customer is unable to make policy or configuration changes in the administration console. Deceptions are not functional in a limited part of the customer's environment.
P3	Minor service impact. Non-critical bug. Difficulty integrating new business or personal application with ShadowPlex. Customer is able	Non-critical individual third party applications: SOC is not able to see incidents pushed by ShadowPlex. Endpoint deceptions deployment is partial.

Severity Level	Definition	Examples
	to access almost all business resources.	
P4	Minor service impact or feature enhancement request. Customer is able to access almost all business resources.	Bugs, such as validation observations in ShadowPlex dashboards. How-to or feature enhancement request.

II.   SUPPORT PACKAGE RESPONSE TIMES

Standard and Premier Support Packages		
Severity Level	First Response	Subsequent Updates
P1	1 Hour	2 Hours
P2	2 Hours	8 Hours
P3	1 Business Day	2 Business Days
P4	2 Business Days	1 Week
Standard & Premier Support Hours: 24 Hours/Day x 7 Days/Week x 365 Days/Year		

Support Packages		
	Standard Support Package	Premium Support Package
Training	Knowledge Transfer Fee-based Remote & Onsite Acalvio Certified Training	Knowledge Transfer Fee-based Remote & Onsite Acalvio Certified Training
Support	12X7 phone & email support	24X7 phone & email support
Adoption Services	None	Named Technical Account Manager

III.   SERVICE LEVEL AGREEMENT FOR SHADOWPLEX CLOUD SERVICES

1. **Acalvio Uptime Commitment**
    a. Subject to the terms of this Service Level Agreement ("SLA"), Acalvio will provide the ShadowPlex Cloud Services at 99.9% Availability (as defined herein) each calendar month (the "Uptime Commitment") as defined below.

    b. The availability of the ShadowPlex Cloud Services for a given month will be calculated according to the following formula (referred to herein as the "Availability"), where: total minutes in the month= TMM; total minutes in month unavailable = TMU; and: Availability = ((TMM-TMU) x 100)/TMM.

c. The ShadowPlex Cloud Services will not be deemed unavailable for any downtime or outages excluded from such calculation by reason of the exceptions set forth below in this SLA.

2. **Maintenance and Other Exceptions from TMU**

    a. The ShadowPlex Cloud Services will not be considered to be unavailable for any outage that results from any planned maintenance performed by Acalvio ("Planned Maintenance"). Acalvio will use commercially reasonable efforts to notify Customer at least one (1) week in advance of such Planned Maintenance, which typically lasts no more than one (1) hour. However, in the event that a longer duration is required, such duration will be mutually agreed upon by both parties. Acalvio will not perform Planned Maintenance (i) more frequently than twice per month or (ii) during normal business hours (9:00 AM to 5:00 PM Pacific Time).

    b. The ShadowPlex Cloud Services will not be considered unavailable for any outage caused by (i) Customer Data deployed on the ShadowPlex Cloud Services or Customer application programming, (ii) acts or omissions of Customer or its agents, (iii) failures of software, equipment or facilities provided by Customer (for example, third party services deployed or integrated with the ShadowPlex Cloud Services, if applicable), (iv) network unavailability or bandwidth limitations outside of the ShadowPlex Cloud Services; (v) factors outside of Acalvio's reasonable control, including any Force Majeure events, denial-of-service attacks, Customer's internet access, or issues with the underlying server-based services beyond the demarcation point of the ShadowPlex Cloud Services; or (vi) suspension or termination of the ShadowPlex Cloud Services in accordance with Section 11(c) or Section 17 of the Agreement.

EXHIBIT A [<mark>OPTION #2 SOFTWARE ONLY – NO HARDWARE</mark>]

ShadowPlex Software Support

I.   **SUPPORT REQUESTS AND SEVERITY LEVELS**

Customer will appoint a single support liaison (and one backup) to communicate with Acalvio support.

Acalvio will not be obligated to answer support inquiries from any other contact.

Any support request must be submitted either within the customer support portal at support.acalvio.com or by email at support@acalvio.com. Each incident will be issued a ticket number by Acalvio. Any follow up calls by Customer must include the applicable ticket number.

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

All support requests will be categorized by Acalvio according to the following table. Acalvio will use its best efforts to respond to these requests in accordance with the support hours and response times specified below that correspond to the support package purchased by Customer as detailed in the Order Form.

Severity Level	Definition	Examples
P1	A service failure or severe degradation. Customer is unable to access any business resources or users are unable to access a critical business application	ShadowPlex is down and not accessible by users. ShadowPlex is slowed to such a degree that multiple users cannot log in, resulting in consistent "page not found errors" or similar. All deceptions are not functional
P2	A partial service failure or mild degradation. Customer is able to access some, but not all business resources. Non-production instance of the service is unavailable. Bug creating significant impact to existing service or application integration.	Customer is unable to make policy or configuration changes in the administration console. Deceptions are not functional in a limited part of the customer's environment.
P3	Minor service impact. Non-critical bug. Difficulty integrating new	Non-critical individual third party applications:

Severity Level	Definition	Examples
	business or personal application with ShadowPlex. Customer is able to access almost all business resources.	SOC is not able to see incidents pushed by ShadowPlex. Endpoint deceptions deployment is partial.
P4	Minor service impact or feature enhancement request. Customer is able to access almost all business resources.	Bugs, such as validation observations in ShadowPlex dashboards. How-to or feature enhancement request.

II.   SUPPORT PACKAGE RESPONSE TIMES

Standard and Premier Support Packages		
Severity Level	First Response	Subsequent Updates
P1	1 Hour	2 Hours
P2	2 Hours	8 Hours
P3	1 Business Day	2 Business Days
P4	2 Business Days	1 Week
Premier & Premier Plus Success Support Hours: 24x7x365		

Support Packages		
	Standard Support Package	Premium Support Package
Training	Knowledge Transfer Fee-based Remote & Onsite Acalvio Certified Training	Knowledge Transfer Fee-based Remote & Onsite Acalvio Certified Training
Support	12X7 phone & email support	24X7 phone & email support
Adoption Services	None	Named Technical Account Manager

EXHIBIT A [OPTION #3 SOFTWARE AND HARDWARE]

I.   **SHADOWPLEX SOFTWARE SUPPORT REQUESTS AND SEVERITY LEVELS**

Customer will appoint a single support liaison (and one backup) to communicate with Acalvio support.

Acalvio will not be obligated to answer support inquiries from any other contact.

Any support request must be submitted either within the customer support portal at support.acalvio.com or by email at support@acalvio.com. Each incident will be issued a ticket number by Acalvio. Any follow up calls by Customer must include the applicable ticket number.

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

All support requests will be categorized by Acalvio according to the following table. Acalvio will use its best efforts to respond to these requests in accordance with the support hours and response times specified below that correspond to the support package purchased by Customer as detailed in the Order Form.

Severity Level	Definition	Examples
P1	A service failure or severe degradation. Customer is unable to access any business resources or users are unable to access a critical business application	ShadowPlex is down and not accessible by users. ShadowPlex is slowed to such a degree that multiple users cannot log in, resulting in consistent "page not found errors" or similar. All deceptions are not functional
P2	A partial service failure or mild degradation. Customer is able to access some, but not all business resources. Non-production instance of the service is unavailable. Bug creating significant impact to existing service or application integration.	Customer is unable to make policy or configuration changes in the administration console. Deceptions are not functional in a limited part of the customer's environment.
P3	Minor service impact. Non-critical bug. Difficulty integrating new business or personal application with ShadowPlex. Customer is able	Non-critical individual third party applications: SOC is not able to see incidents pushed by ShadowPlex. Endpoint deceptions deployment is partial.

Severity Level	Definition	Examples
	to access almost all business resources.	
P4	Minor service impact or feature enhancement request. Customer is able to access almost all business resources.	Bugs, such as validation observations in ShadowPlex dashboards. How-to or feature enhancement request.

II.   HARDWARE SUPPORT SERVICES

In the event any Hardware supplied by Acalvio to Customer in connection with the Services fails to perform in accordance with the Documentation, Acalvio will, without additional charge to Customer, replace such Hardware. Upon receipt of a written notice from the Customer detailing the nature of the non-conformity or defect, Acalvio will replace the defective Hardware within a reasonable time frame. The replacement Hardware shall be of the same or functionally equivalent model. This right of replacement is Customer's sole remedy with respect to defective Hardware provided under this Agreement.

III.   SUPPORT PACKAGE RESPONSE TIMES

Standard and Premier Support Packages		
Severity Level	First Response	Subsequent Updates
P1	1 Hour	2 Hours
P2	2 Hours	8 Hours
P3	1 Business Day	2 Business Days
P4	2 Business Days	1 Week
Premier & Premier Plus Success Support Hours: 24x7x365		

Support Packages		
	Standard Support Package	Premium Support Package
Training	Knowledge Transfer Fee-based Remote & Onsite Acalvio Certified Training	Knowledge Transfer Fee-based Remote & Onsite Acalvio Certified Training
Support	12X7 phone & email support	24X7 phone & email support
Adoption Services	None	Named Technical Account Manager

EXHIBIT A [OPTION 4 – SOFTWARE, HARDWARE & CLOUD SERVICES]

I.   SHADOWPLEX SOFTWARE SUPPORT REQUESTS AND SEVERITY LEVELS

Customer will appoint a single support liaison (and one backup) to communicate with Acalvio support.

Acalvio will not be obligated to answer support inquiries from any other contact.

Any support request must be submitted either within the customer support portal at support.acalvio.com or by email at support@acalvio.com. Each incident will be issued a ticket number by Acalvio. Any follow up calls by Customer must include the applicable ticket number.

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

All support requests will be categorized by Acalvio according to the following table. Acalvio will use its best efforts to respond to these requests in accordance with the support hours and response times specified below that correspond to the support package purchased by Customer as detailed in the Order Form.

Severity Level	Definition	Examples
P1	A service failure or severe degradation. Customer is unable to access any business resources or users are unable to access a critical business application	ShadowPlex is down and not accessible by users. ShadowPlex is slowed to such a degree that multiple users cannot log in, resulting in consistent "page not found errors" or similar. All deceptions are not functional.
P2	A partial service failure or mild degradation. Customer is able to access some, but not all business resources. Non-production instance of the service is unavailable. Bug creating significant impact to existing service or application integration.	Customer is unable to make policy or configuration changes in the administration console. Deceptions are not functional in a limited part of the customer's environment.
P3	Minor service impact. Non-critical bug. Difficulty integrating new business or personal application with ShadowPlex. Customer is able to access almost all business resources.	Non-critical individual third party applications: SOC is not able to see incidents pushed by ShadowPlex. Endpoint deceptions deployment is partial.

Severity Level	Definition	Examples
P4	Minor service impact or feature enhancement request. Customer is able to access almost all business resources.	Bugs, such as validation observations in ShadowPlex dashboards. How-to or feature enhancement request.

II.   HARDWARE SUPPORT SERVICES

In the event any Hardware supplied by Acalvio to Customer in connection with the Services fails to perform in accordance with the Documentation, Acalvio will, without additional charge to Customer, replace such Hardware. Upon receipt of a written notice from the Customer detailing the nature of the non-conformity or defect, Acalvio will replace the defective Hardware within a reasonable time frame. The replacement Hardware shall be of the same or functionally equivalent model. This right of replacement is Customer's sole remedy with respect to defective Hardware provided under this Agreement.

III.   SUPPORT PACKAGE RESPONSE TIMES

Standard and Premier Support Packages		
Severity Level	**First Response**	**Subsequent Updates**
P1	1 Hour	2 Hours
P2	2 Hours	8 Hours
P3	1 Business Day	2 Business Days
P4	2 Business Days	1 Week
Premier & Premier Plus Success Support Hours: 24x7x365		

Support Packages		
	Standard Support Package	**Premium Support Package**
Training	Knowledge Transfer Fee-based Remote & Onsite Acalvio Certified Training	Knowledge Transfer Fee-based Remote & Onsite Acalvio Certified Training
Support	12X7 phone & email support	24X7 phone & email support
Adoption Services	None	Named Technical Account Manager

IV. **SERVICE LEVEL AGREEMENT FOR SHADOWPLEX CLOUD SERVICES**

1. **Acalvio Uptime Commitment.**
   a. Subject to the terms of this Service Level Agreement ("SLA"), Acalvio will provide the ShadowPlex Cloud Services at 99.9% Availability (as defined herein) each calendar month (the "Uptime Commitment") as defined below.

   b. The availability of the ShadowPlex Cloud Services for a given month will be calculated according to the following formula (referred to herein as the "Availability"), where: total minutes in the month= TMM; total minutes in month unavailable = TMU; and: Availability = ((TMM-TMU) x 100)/TMM.

   c. The ShadowPlex Cloud Services will not be deemed unavailable for any downtime or outages excluded from such calculation by reason of the exceptions set forth below in this SLA.

2. **Maintenance and Other Exceptions from TMU**
   a. The ShadowPlex Cloud Services will not be considered to be unavailable for any outage that results from any planned maintenance performed by Acalvio ("Planned Maintenance"). Acalvio will use commercially reasonable efforts to notify Customer at least one (1) week in advance of such Planned Maintenance, which typically lasts no more than one (1) hour. However, in the event that a longer duration is required, such duration will be mutually agreed upon by both parties. Acalvio will not perform Planned Maintenance (i) more frequently than twice per month or (ii) during normal business hours (9:00 AM to 5:00 PM Pacific Time).

   b. The ShadowPlex Cloud Services will not be considered unavailable for any outage caused by (i) Customer Data deployed on the ShadowPlex Cloud Services or Customer application programming, (ii) acts or omissions of Customer or its agents, (iii) failures of software, equipment or facilities provided by Customer (for example, third party services deployed or integrated with the ShadowPlex Cloud Services, if applicable), (iv) network unavailability or bandwidth limitations outside of the ShadowPlex Cloud Services; (v) factors outside of Acalvio's reasonable control, including any Force Majeure events, denial-of-service attacks, Customer's internet access, or issues with the underlying server-based services beyond the demarcation point of the ShadowPlex Cloud Services; or (vi) suspension or termination of the ShadowPlex Cloud Services in accordance with Section 11(c) or Section 17 of the Agreement.