

HALOGEN[®] SOFTWARE

Strategic Talent Management

SUBSCRIPTION SOFTWARE LICENSE AND SERVICES AGREEMENT

RFP 2014.158
Contract No. 11-2014-1610

THIS SUBSCRIPTION SOFTWARE LICENSE AND SERVICES AGREEMENT is entered into between: Halogen Software Inc., ("Halogen") having a principal place of business at 495 March Road, Suite 100, Kanata, Ontario, CANADA K2K 3G1 and Adams County, Colorado (the "Customer"), having a principal place of business at 4430 South Adams County Parkway, Brighton, CO 80601, USA and, once the Agreement has been signed by both parties, with an Effective Date as Indicated in the Table of Section 1 below, ("Effective Date").

WHEREAS Halogen is a company that, among other things, has developed and is the owner of certain computer software programs;

AND WHEREAS Customer wishes to license the Software described in Appendix A and to procure the Services as described herein;

NOW THEREFORE in consideration of the mutual promises, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, Customer and Halogen agree as follows:

1. SOFTWARE AND SERVICES

Customer hereby licenses and/or purchases the following Software, Documentation and/or Services at the stated quantities and prices from Halogen, subject to the General Terms and Conditions attached hereto as Schedule A.

ANNUAL SOFTWARE LICENSE SUBSCRIPTION & PROFESSIONAL SERVICES FEE

Description	License Term	No. of Licenses	Annual Subscription Fee
Halogen Performance™ Public Sector, 360 Multitrater™, Compensation™, Learning™ (Includes SCORM) with Single Sign-on (SSO) Connectivity and Halogen® HRIS Connect™, (Inclusive of M&S Fees and on-demand Hosting Services Fees)	Two (2) year subscription Year 1: Effective date of December 31, 2014 and expiring on December 30, 2015 Year 2: Commencing on December 31, 2015 and expiring on December 30, 2016	1800	US\$63,180.00
Annual Professional Services Fee - Continuous Advancement - Level III - Halogen Performance™, 360 Multitrater™, Compensation™, Learning™	As above	N/A	US\$3,627.00
TOTAL ANNUAL SOFTWARE LICENSE SUBSCRIPTION & PROFESSIONAL SERVICES FEE (EXCLUSIVE OF TAXES)			US\$66,807.00

ONE-TIME PROFESSIONAL SERVICES FEE

One-Time Professional Service Description	One-Time Professional Services Fee
Initial Launch - Level III - Halogen Performance™, 360 Multitrater™, Compensation™ and Learning™ Note: Travel & Living Expenses costs included	US\$30,195.00
TOTAL ONE-TIME PROFESSIONAL SERVICES FEE (EXCLUSIVE OF TAXES)	US\$30,195.00

The above pricing shall apply provided that this Agreement is executed and returned by Customer prior to 5:00 p.m. (ET) on December 30, 2014

2. PAYMENT TERMS

Customer agrees to the following payment terms with respect to Software and Services (as defined herein)

- (a) Annual Software License Subscription Fee. The Annual Software License Subscription Fee is comprised of the License, M&S, and Hosting Services Fees (if purchased). The first Annual Software License Subscription Fee for the initial licenses granted under this Agreement is due and payable within thirty (30) days of the Effective Date; subsequent years' Annual Software License Subscription Fees are due and payable on the anniversary of December 31.

i. Fees for Additional Subscription Licenses – Halogen Performance™ Public Sector, Halogen 360 Multitracer™, Halogen Learning™, Halogen Compensation™, Single Sign-on (SSO) Connectivity and Halogen™ HRIS Connect™. During the initial subscription term of this Agreement, Customer has the option to purchase additional subscription licenses for Halogen Performance™ Public Sector, Halogen 360 Multitracer™, Halogen Learning™, Halogen Compensation™, Single Sign-on (SSO) Connectivity and Halogen™ HRIS Connect™ in minimum bundles of twenty-five (25) licenses. The Annual Software License Subscription Fees for such subscription licenses purchased during the initial subscription term will not exceed the applicable price per license set out in Section 1 above (pro-rated to the end of the initial subscription term).

ii. Fees for Additional Module Subscription Licenses – Halogen Talent Acquisition™ and Halogen Job Description Builder™. During the initial subscription term of this Agreement, Customer has the option to purchase subscription licenses for each of Halogen Talent Acquisition™ and Halogen Job Description Builder™. The Annual Software License Subscription Fees for such subscription licenses purchased during the initial subscription term will not exceed the applicable price per license as set out below (pro-rated to the end of the initial subscription term), provided that the number of such additional module subscription licenses shall be equal to the then-current number of Halogen Performance™ licenses.

Halogen Talent Acquisition™ US\$8,775.00 (for one enterprise-wide usage license to cover any number of internal recruiters)

Annual Certain to Succeed Continuous Advancement Services – US\$1,032.75

Halogen Job Description Builder™ US\$5.40/license (the number of module subscription licenses shall be equal to the then-current number of Halogen Performance™ licenses)

Annual Certain to Succeed Continuous Advancement Services – US\$1,046.25

iii. Additional Annual Software License Subscription Fees applicable to any additional licenses purchased by Customer (whether for the specific modules listed above, or for any other modules) during the remainder of the Term (i.e.: after the initial subscription term), as "Term" is defined in Section 1(a) of Schedule A to this Agreement, will be calculated in accordance with Halogen's then-current price list (prorated to the end of the remaining annual subscription period).

In any of (i), (ii) or (iii), above, such additional Annual Software License Subscription Fees are due and payable within thirty (30) days of Customer's receipt of Halogen's invoice.

- (b) Annual Professional Services Fee. The first Annual Professional Services Fee for the initial licenses granted under this Agreement is due and payable within thirty (30) days of the Effective Date; subsequent years' Annual Professional Services Fees are due and payable on the anniversary of December 31. Additional Annual Professional Services Fees applicable to any additional licenses purchased by Customer during the Term, as defined in Section 1(a) of Schedule A to this Agreement, will be calculated in accordance with Halogen's then-current price list (prorated to the end of the remaining annual subscription period), and are due and payable within thirty (30) days of Customer's receipt of Halogen's invoice.

- (c) One-Time Professional Services Fee. The One-Time Professional Services Fee as specified in Section 1 of this Agreement, and as further described in Appendix D, is due and payable within thirty (30) days of the Effective Date. Fees for additional Professional Services are payable in accordance with the schedule set out in the applicable Services Agreement.

- (d) Expenses. Unless otherwise specified herein or in a Services Agreement, Customer shall reimburse Halogen for all reasonable travel and out-of-pocket expenses incurred by Halogen's representatives when traveling to perform any Services for Customer, in accordance with Halogen's then current Travel & Expense Guidelines, available on-line at http://www.halogensoftware.com/files/PDF/secure/travel_policy.php (password: halogen_travel). For clarity, Halogen acknowledges and agrees that no travel or out-of-pocket expenses shall be incurred other than in accordance with this Agreement and/or an executed Services Agreement. Notwithstanding the foregoing, the parties agree that with respect to the Initial Launch – Level III – Halogen Performance™, 360 Multitracer™, Compensation™ and Learning™, set out in Section 1 above, in lieu of reimbursing Halogen for travel and out-of-pocket expenses in accordance with Halogen's Travel & Expense Guidelines, is included as part of the One-Time Professional Services Fee. Halogen shall not undertake any additional travel on behalf of Customer outside the scope of this Agreement without the prior written permission (email included) of Customer.

3. PURCHASE ORDER AND INVOICING DETAILS

Customer hereby agrees either that:

- (i) It has generated a purchase order ("PO") to cover the total of the Fees and expenses specified in the Agreement,

and the PO number is: _____

The PO document should be faxed to 775-640-9544 or emailed to ar@halogensoftware.com to ensure proper reference on invoices for the products and services purchased from Halogen.

OR

- (ii) A PO is not required to authorize payment in full to Halogen of the Fees and expenses specified herein.

Unless otherwise agreed by the parties in writing, Halogen shall send Customer's Invoice to the following email address:

4. SCHEDULES/APPENDICES

The following schedules and appendices are attached to and form part of this Agreement:

Schedule A	General Terms and Conditions
Appendix A	Description of the Software
Appendix B	M&S Services
Appendix C	On-demand Hosting Services
Appendix D	Professional Services

5. ENTIRE AGREEMENT

This Agreement, including its Schedules and Appendices, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior statements, representations, discussions, negotiations and agreements, both oral and written. No modification, amendment or variation hereof shall be of effect or binding upon the parties hereto unless agreed to in writing by their authorized officers. For clarity, any pre-printed terms and conditions on Customer's purchase order or other similar document shall be of no force or effect.

6. COUNTERPARTS

This Agreement may be executed in more than one counterpart, each of which is deemed an original and all of which together constitute one instrument. Delivery of an executed counterpart of this Agreement by fax or e-mail transmission is deemed to be properly binding upon the delivering party.

7. AUTHORITY TO BIND

The undersigned individuals represent and warrant that they are expressly and duly authorized by their respective entities or agencies to execute this Agreement and to legally bind their respective entities or agencies as set forth in this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

Halogen Software Inc.

Signature: _____

Name: _____

Title: _____

Date: _____

Eric J. Graham
Vice President, Finance

Dec 23, 2014

Adams County, Colorado

Signature: _____

Name: _____

Title: _____

Date: _____

Todd M Leopold

Todd M Leopold

County Manager

Dec. 24, 2014

ATTEST:

Karen Long
Clerk and Recorder

[Signature]

APPROVED AS TO FORM:

Adams County Attorney's Office

By: _____

Attorney Signature

[Signature]

SCHEDULE A

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS.

- (a) In these General Terms and Conditions, including the Appendices hereto, unless the context requires otherwise, the following words and phrases have the respective meanings set out below:

"Affiliate" means, with respect to either party, any entity that directly or indirectly controls, is controlled by or is under the common control of a party for so long as such control lasts, where "control" of an entity means the ownership of at least fifty percent (50%) of the voting securities of the controlled entity.

"Agreement" means this Subscription Software License and Services Agreement, including these General Terms and Conditions, and the Appendices set out in Section 4 of the Agreement, as well as any extension, renewal or amendment signed by the parties hereto.

"Business Day" means Monday through Friday, excluding the following holidays recognized in the Province of Ontario, Canada: New Year's Day; Family Day; Good Friday; Victoria Day; Canada Day; Civic Holiday; Labor Day; Thanksgiving; Christmas Day; Boxing Day.

"Documentation" means the standard, English-language printed and electronic versions of all documentation intended for use with the Software, including but not limited to the Specifications, user manuals, system administrator manuals and other guides, but excluding training materials.

"Effective Date" means the date when both parties have signed this Agreement.

"Error" means any material and reproducible failure of the Software to operate and/or perform in accordance with the Documentation.

"Fees" means the fees payable for the License, M&S Services, Hosting Services, and Professional Services, specified in Section 1 of the Agreement.

"Hosting Services" means, if applicable, the hosted, on-demand services provided by Halogen for Customer's benefit pursuant to Section 5 and Appendix C.

"M&S Services" means those maintenance and support services provided by Halogen pursuant to Section 3 and Appendix B.

"Professional Services" means the services provided by Halogen pursuant to Section 4 and Appendix D, namely the One-Time Professional Services and the Annual Professional Services, as well as any services that Halogen may agree to provide pursuant to a Services Agreement.

"Review" means, if applicable, an evaluation document created for an employee or contractor of Customer using the Software.

"Services" means those services provided by Halogen as described in this Agreement and/or in a Services Agreement, inclusive of M&S Services, Hosting Services and Professional Services, as applicable.

"Services Agreement" means a mutually agreed upon executed document which describes the Professional Services.

"Software" means the version of the Halogen software program identified in Section 1 of the Agreement and described in Appendix A in object code format, and any releases, derivatives, improvements, translations, adaptations, alterations, revisions, extensions, changes, enhancements or modifications.

"Specifications" means the technical specifications for the Software identified and set out in the Documentation.

"Term" means the initial subscription term and any annual renewal term, as described in Section 7(a) of this Schedule A.

"Update" means a fix, patch or such other minor improvement, enhancement, modification or expansion of the Software (typically denoted by an increment to the Software's number immediately to the right of the decimal point, i.e. 12.1, and 12.2) as well as major revisions to and new versions of the Software (typically denoted by an increment to the Software's number to the left of the decimal point, i.e. 12.0 and 13.0), which are generally commercially distributed by Halogen as part of the M&S Services and for which Halogen does not impose a separate charge or license separately.

2. GRANT OF LICENSE

- (a) General Grant During the Term, except as otherwise specified herein, Customer is hereby granted a non-transferable, non-assignable, non-exclusive, internal license, without right to sublicense, to use the number of licenses to the Software and Documentation specified in Section 1 of the Agreement solely for the purposes contemplated by and described in Appendix A, provided however that in respect of Halogen Talent Acquisition™, if applicable, such license use shall be limited to Customer Size (in respect of Halogen Talent Acquisition™) and Customer Size/Job Description Total (in respect of Halogen Job Description Builder™ when it is not licensed with any other module) ("License"). Notwithstanding the foregoing, Customer is hereby permitted to sublicense its right to use the Software and Documentation to its Affiliates, provided that: (i) Customer provides Halogen with a minimum of ten (10) days prior written notice of such sublicense; (ii) Customer remains solely responsible for the actions and/or inactions of such Affiliates; and (iii) the combined total of all Licenses does not exceed the maximum number of Licenses, or in the case of Halogen Talent Acquisition™ or Halogen Job Description Builder™ (if not licensed with any other module), if applicable, Customer Size (in respect of Halogen Talent Acquisition™) and Customer Size/Job Description Total (in respect of Halogen Job Description Builder™ if not licensed with any other module), specified in Section 1 of the Agreement.
- (b) Restrictions Customer shall use the Software and Documentation solely for its internal business operations. Except as expressly authorized by this Agreement, Customer shall not, without Halogen's prior written consent: (i) use, copy, modify, adapt, improve, maintain, license, sublicense, lease, sell, rent, export, or grant other rights in and to the Software; (ii) transfer this Agreement or any license to use the Software in whole or in part; (iii) except as permitted by law, translate, reverse engineer, modify, adapt, create derivative works, decompile, merge, separate, disassemble or convert into human readable form or into another computer language, all or any part of the Software; (iv) remove any copyright, patent, trademark, design right, trade secret, or any other proprietary rights legends from the Software; or (v) disclose the results of any benchmark test of the Software to any third party. Customer is responsible for all activities conducted under its user logins and for its users' compliance with this Agreement. While using the Software and Documentation, Customer shall not: (i) send or store infringing or unlawful material; (ii) send or store malicious code; (iii) attempt to gain unauthorized access to, or

disrupt the integrity or performance of, the Software or the data contained therein; (iv) permit access to the Software by a direct competitor of Halogen; or (v) use the Software to provide any service to a third party.

- (c) Copies. If Customer's deployment is on-premise, Customer may make a reasonable number of copies of the Software for back-up or archival purposes. Notwithstanding the foregoing, absent Halogen's prior written permission, Customer is not authorized to install more than one instance of the Software. Customer may also make copies of the Documentation for use at Customer's premises as necessary to assist Customer in using the Software. Customer shall reproduce all confidentiality and proprietary notices upon such copies of the Software and Documentation.
- (d) Reserved Rights. Any rights not expressly granted herein shall be reserved for Halogen. Rights in and to the source code as well as rights in and to other information pertaining to the logic, design or structure of the Software are specifically excluded from the License.

3. MAINTENANCE & SUPPORT SERVICES

Halogen shall provide the M&S Services as described in Appendix B

4. PROFESSIONAL SERVICES

Customer acknowledges and agrees that it must purchase One-Time Professional Services and Annual Professional Services in conjunction with the License. Upon request, Halogen may provide additional Professional Services, including, but not limited to training, consulting, database or data migration services. In support thereof and in accordance with the provisions of Appendix D, Halogen shall provide the Professional Services specified in Section 1 of the Agreement and such further Professional Services as may be specified from time to time in a Services Agreement.

5. HOSTING SERVICES

If purchased by Customer under the Agreement, Halogen shall provide Hosting Services during the Term: (i) in support of the number of Licenses, and/or Customer Size, if applicable, specified in Section 1 of the Agreement; and, (ii) in accordance with Appendix C. Unless otherwise agreed by the parties, the Hosting Services shall be provided in respect of one (1) hosted site only.

6. PAYMENTS

- (a) Fees and Expenses. Customer shall pay to Halogen the Fees and other expenses, as applicable, set out in Section 1 of the Agreement. Following the initial subscription term (as identified in Section 1 of this Agreement), Halogen reserves the right to increase the Annual Software License Subscription Fee and Annual Professional Services Fee as set out in Section 1 of the Agreement upon renewal upon not less than thirty (30) days notice.
- (b) No License Rights/Suspension. Customer acknowledges that Customer has no rights under this Agreement in respect of any undisputed unpaid Licenses and Professional Services. Halogen reserves the right to suspend the performance of any or all of its obligations hereunder upon not less than thirty (30) days prior written notice if undisputed amounts are unpaid when due and remain unpaid at the end of such notice period. Specifically, if Customer's deployment is on-demand, if Customer does not pay its annual Hosting Services Fee in a timely manner (which Fee is part of Customer's Annual Software License Subscription Fee), Halogen may terminate Customer's hosted access in accordance with Section 6 of Appendix C (Termination of Hosting Services).
- (c) Disputes. If Customer disputes the correctness of any part of Halogen's invoiced Fees or expenses, Customer shall advise Halogen within thirty (30) days from Customer's receipt of the applicable invoice, failing which such invoice must be paid in full

in accordance with the terms of this Agreement. Nothing in this clause allows Customer to delay payment of any part of the applicable invoice that is not in dispute.

- (d) Taxes. Customer shall provide Halogen with a tax exempt certificate, failing which, Customer shall pay all applicable duties, taxes or amounts due in lieu thereof owed by Customer, related in any way to this Agreement, exclusive only of taxes based on Halogen's net income.
- (e) Shipment. Unless otherwise agreed by the parties in writing, Halogen shall deliver the Software and Documentation electronically. If a physical shipment is required, it shall be FOB shipping point. Responsibility and title in the Software (to the extent that any title is transferred under this Agreement) shall pass to Customer as follows: (i) if physically shipped, once the Software is delivered to Halogen's commercial carrier; (ii) if electronically shipped absent any Hosting Services from Halogen, once Halogen delivers to Customer the applicable downloadable license file, or (iii) if electronically shipped to Customer for use in Halogen's hosted on-demand hosting environment, once the Software is made available to Customer. The Software shall be deemed accepted upon delivery.
- (f) Currency. Unless otherwise indicated, all prices quoted in this Agreement are in United States of America Dollars ("USD"), and payments to Halogen pursuant to this Agreement are to be made in USD.
- (g) Money Back Guarantee. All Software licensed by Halogen under the terms of this Agreement (other than additional licenses for a previously licensed module) and the Annual Professional Services component of the Customer's Professional Services entitlement shall be subject to a money back guarantee, commencing upon the Effective Date of this Agreement (or the applicable Addendum) and continuing for a period of one hundred and eighty (180) days (the "MBG Period"). At any time during the MBG Period, subject to the below listed conditions but otherwise at Customer's sole discretion, Customer may elect to terminate this Agreement (either in whole or in part, in respect of only select module(s)) and obtain a pro-rata refund of the first year's Annual Software License Subscription Fee and the first year's Annual Professional Services Fee for the module(s) being returned, calculated from the date Halogen receives Customer's notice to the end of the first year's subscription term. In such event, notwithstanding anything in this Agreement or the applicable Addendum to the contrary, Customer shall not be required to pay Halogen the subsequent years' Annual Software License Subscription Fee (if any) and/or the subsequent years' Annual Professional Services Fee (if any) in respect of such module(s). The money back guarantee described above is subject to the following conditions:
- (i) Customer must have booked and fully received one of Halogen's assisted implementation services programs for the module(s) being returned. For clarity, Customer's refund entitlement does not include the One-Time Professional Services Fee paid or payable in respect of such services program; and,
- (ii) Customer's notice must be sent to contracts@halogensoftware.com with a hard copy by regular mail to the address noted above, Attention: Finance Department.
- (h) Late Payment. All undisputed past due payments shall incur a late fee of two percent (2%) monthly and twenty-four percent (24%) annually, or the highest amount permissible at law, whichever is less.

7. TERM AND TERMINATION

- (a) Term. This Agreement shall be effective on the Effective Date and shall, unless earlier terminated as provided herein, continue for the initial subscription term (as identified in Section 1 on Page 1 of this Agreement). Following the initial subscription term, the provisions of this Agreement shall automatically renew at Halogen's then-current rates for subsequent one year terms, unless either party provides written notice of its intention not to renew this Agreement at least thirty (30) days prior to the end of the then-current subscription term.
- (b) Termination. This Agreement shall terminate on the earlier of: (i) termination of the Term, where notice of non-renewal is timely provided by one party to the other in accordance with Section 7(a) above; (ii) on a day that is thirty (30) days after one party gives the other written notice of breach by the other of any material term or condition of this Agreement, unless the breach is remedied before that day to the satisfaction of the notifying party; (iii) upon written notice of termination by one party, effective immediately, if the other party is or becomes insolvent or bankrupt or ceases paying its debts as they mature, or makes or files an assignment in bankruptcy or otherwise acknowledges its insolvency, or a trustee, receiver, liquidator or similar official is appointed for the other party or any substantial portion of its property and assets, or bankruptcy, insolvency, arrangement or similar proceedings are instituted by or against the other party; (iv) upon written notice of termination by either party, effective immediately, if the circumstances of Force Majeure described in Section 18(d) are continuing and have continued for a period of at least sixty (60) consecutive days; or (v) upon written notice of termination by Halogen if Customer fails to pay any or all undisputed Fees or other amounts due hereunder within fifteen (15) days of receipt of such notice.
- (c) Effect of Termination. Upon any termination of this Agreement, and unless otherwise provided herein: (i) if termination is due to Customer's unremedied material breach or its bankruptcy or insolvency (as each are described in Section 7(b)) or due to Force Majeure (as defined in Section 18(d)), all payments that would otherwise have been payable for Software received or Services performed hereunder during the Term (to the extent not already paid by Customer) shall become due immediately; (ii) if termination is due to Halogen's unremedied material breach or its bankruptcy or insolvency (as each is described in Section 7(b)), any prepayment made by Customer to Halogen for Software received or Services that would otherwise have been performed after the termination date shall be refunded to Customer; (iii) subject to paragraph (e), Customer shall immediately cease using the Software and, shall return to Halogen or destroy all copies of the Software and Documentation, and certify to Halogen in writing that Customer has complied with its termination obligations hereunder; and (iv) each party shall return to the other, or destroy all Confidential Information of the other party in its possession or under its control, and provide certification of destruction of same upon request. Notwithstanding the foregoing, Customer may retain one or more copies of this Agreement for its files.
- (d) Services Termination. Should either party terminate any Hosting Services or Annual Professional Services (as expressly provided herein), the provisions of this Agreement which are applicable to the services or obligations so terminated shall be deemed terminated and the provisions of Section 7(c) shall apply, as applicable. Termination of such Services shall not result in the termination of any valid licenses to the Software, which shall otherwise remain in full force or effect as provided herein.
- (e) Survival. Sections 2, 6(c), 7(c), 8 to 10 and 12 to 18 shall survive the termination or expiration of this Agreement.

8. OWNERSHIP

- (a) General Proprietary Rights. The Software and Documentation and the media on which they are provided (if any) are licensed,

not sold. All right, title and interest in and to the Software and Documentation, including all patents, copyrights, trademarks, mask works, circuit layout rights, design rights, trade secrets and other proprietary and intellectual property rights in or related to the Software and Documentation, along with all enhancements, modifications, translations and derivative works of the Software or Documentation, belong to Halogen or its licensors, whether or not specifically recognized or perfected under the laws of the country where the Software and/or Documentation is located.

- (b) Feedback. Halogen shall have a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable (only to a successor in interest by way of merger, reorganization or sale of all or substantially all assets or equity), sublicenseable license to use, copy, modify, or distribute, including by incorporating into the Software, any suggestions, recommendations or other feedback provided by Customer or its users relating to the operation of the Software.
- (c) No Additional Rights. Nothing in this Agreement shall be construed as increasing the number of copies licensed to Customer or the number of permitted users or licenses, or providing Customer with additional Halogen products or services.

9. CONFIDENTIALITY

- (a) Definition. The parties acknowledge that one party ("Receiving Party") may receive confidential and/or proprietary information relating to the other party ("Disclosing Party") or its licensors or customers ("Confidential Information"). The parties shall only use such Confidential Information in the performance of this Agreement and shall not disclose any such Confidential Information to any other party unless authorized by the Disclosing Party in writing. Halogen Confidential Information shall be deemed to include, regardless of marking, the Software, the Documentation, any unannounced product(s) or service(s) of Halogen, and the terms, conditions and subject matter of this Agreement and any related contractual documents. If Customer's deployment is on-demand, Customer Confidential Information shall be deemed to include, regardless of marking, all Customer data, files and records stored on any equipment used by Halogen to provide the Hosting Services. As soon as practicable, Receiving Party shall notify Disclosing Party of any breach of this Section 9 of the Agreement.
- (b) Restrictions. Receiving Party shall not transmit, maintain, manufacture or duplicate all or any part of, the Confidential Information except in accordance with the terms and conditions of this Agreement. Receiving Party shall be directly liable for the acts or omissions of its employees or contractors with respect to such confidentiality obligations. Receiving Party agrees to protect the Confidential Information with at least the same degree of care it uses to protect its own trade secrets and proprietary information but no less than reasonable care.
- (c) Exclusions. The foregoing confidentiality obligations shall not apply to Confidential Information which: (i) at the time of disclosure is within the public domain, other than through a breach of this Agreement by the Receiving Party; (ii) after disclosure becomes readily and lawfully available to the industry or the public, other than through a breach of this Agreement by the Receiving Party; (iii) Receiving Party can establish, by documented and competent evidence, was in its possession prior to the date of disclosure by Disclosing Party; (iv) Receiving Party can establish, by documented and competent evidence, was independently developed by the Receiving Party without use or reliance upon the Confidential Information; or (v) is approved for disclosure, in advance, in writing by Disclosing Party.
- (d) Compelled Disclosure. In the event that the Receiving Party is requested pursuant to legal process to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall provide the Disclosing Party with notice to such

effect, and at the request of the Disclosing Party shall cooperate with the Disclosing Party at no cost to the Receiving Party in seeking relief against the disclosure of such Confidential Information. In the event that through legal process the Receiving Party is obligated to disclose any Confidential Information, the Receiving Party may do so without breaching the terms of this Agreement, provided that the Receiving Party furnishes only that portion of the Confidential Information that it is legally required to furnish.

- (e) Equitable Remedies. Receiving Party acknowledges that disclosure or use of the Confidential Information contrary to this Agreement may cause the Disclosing Party irreparable harm for which damages would not be an adequate remedy and further acknowledges that, in addition to any other remedies that may be available at law, the Disclosing Party may apply for all available equitable relief including injunctive relief.

10. PERSONAL INFORMATION

Halogen acknowledges that, in the course of fulfilling its obligations under this Agreement, it may have or be given access to information about an identifiable individual which is personal information, personal data and/or sensitive personal data (as defined in the applicable privacy or data protection legislation, if any) ("Personal Information"). Halogen shall comply with all applicable laws governing the use, disclosure and access of such Personal Information, including but not limited to, any and all requirements to protect such information from loss or unauthorized access as required by the *Personal Information Protection and Electronic Documents Act* (PIPEDA) where applicable. Without limiting the generality of the foregoing, Halogen agrees that Personal Information shall be considered and treated as Confidential Information and shall therefore be subject to the provisions of Section 9.

11. WARRANTIES

- (a) Software Warranty. Halogen warrants that during the period beginning on the Effective Date and continuing for ninety (90) days thereafter ("Warranty Period"): (i) the Software shall conform substantially to the Specifications set out in the Documentation ("Software Warranty"); and (ii) if applicable, the media upon which the Software is provided shall be free from defects in materials and workmanship ("Media Warranty").

Customer's sole remedy and Halogen's sole obligation with respect to a breach of the foregoing warranties is as follows: (i) in respect of the Media Warranty, provided that the media is returned to Halogen within the Warranty Period, Halogen shall provide Customer with replacement media; and, (ii) in respect of the Software Warranty, provided that Halogen is notified in writing of the non-conformance during the Warranty Period, Halogen shall, at its sole option, use commercially reasonable efforts to correct significant defects in the Software or provide a workaround thereto, without charge to Customer, failing which, Halogen shall refund to Customer an amount equivalent to, but no greater than, the Annual Software License Subscription Fee paid in respect thereof.

The above warranties shall not apply to: (a) any Software that is modified without Halogen's written consent; or (b) any Software which has been misused, altered, repaired or used with equipment or software not expressly approved by Halogen. Halogen shall have no responsibility for claims arising from: (i) modifications of the Software made by Customer if such claim would not have arisen but for such modifications; or (ii) combination or use of the Software with any other products, if such claim would not have arisen but for such combination or use. Customer further acknowledges that the Software, if it is to be installed on-premise at Customer's site and not hosted by or on behalf of Halogen, typically requires some configuration upon installation, that certain customary infrastructure such as internet connectivity must be in place at Customer's site in order for certain functionality to operate in accordance with the

Documentation, and that the provision of this infrastructure is not part of this Agreement.

- (b) Services Warranty. Halogen warrants that the Services to be provided hereunder shall be performed with reasonable care and skill by an individual trained in and competent with the Software and in a professional manner. Halogen's sole responsibility and Customer's sole remedy with respect to deficient or non-conforming Services is to use commercially reasonable efforts to re-perform such services in accordance with the terms and conditions of this Agreement.

- (c) General. Halogen represents and warrants that it has all right, power, and authority to enter into this Agreement and to provide the Software and Services described in the Agreement and that nothing in this Agreement or Halogen's performance consistent therewith will violate any agreement or obligation that Halogen has to a third party.

- (d) Disclaimer. THE WARRANTIES IN THIS SECTION 11 ARE THE ONLY WARRANTIES EXPRESSLY GIVEN BY HALOGEN WITH RESPECT TO THE SOFTWARE, DOCUMENTATION AND THE SERVICES. TO THE EXTENT PERMITTED BY LAW, HALOGEN EXCLUDES ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THOSE CONCERNING MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. HALOGEN DOES NOT MAKE ANY WARRANTIES THAT THE SOFTWARE AND THE OPERATION THEREOF WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE.

- (e) No Authorization. No Halogen agent, representative or dealer is authorized to modify, extend or add to any warranty on behalf of Halogen.

12. INTELLECTUAL PROPERTY INDEMNIFICATION

- (a) Defence of Infringement. Halogen shall indemnify, hold Customer harmless against and defend or settle any action brought against Customer to the extent that it is based on a claim that the Software provided by Halogen under this Agreement infringes any patent or copyright of a third party registered, pending and/or issued in Canada or the United States of America as of the Effective Date ("Third Party Rights") and shall pay the resulting costs, damages and legal fees finally awarded against Customer, provided that: (i) Customer notifies Halogen in writing within ten (10) days of receiving notice of any such claim against Customer; (ii) Halogen or its licensors have sole control of the defence, compromise or settlement of such claim, including any appeals; (iii) Customer reasonably cooperates with Halogen in the defence or settlement of such claim at no charge to Customer; and (iv) Customer makes no admissions or offers of settlement to the third party. Halogen shall not be liable for any costs or expenses incurred by Customer with respect to settlement of an infringement claim without Halogen's prior written authorization.

- (b) Exclusions. Halogen shall have no liability hereunder for any claim of infringement based on: (i) use of a superseded release of the Software if the infringement would have been avoided by the use of a current release of the Software that has been made available by Halogen to Customer at no additional cost to Customer; (ii) the use of a release of the Software that has been modified or altered by a party other than Halogen or used not as directed by Halogen if the infringement would have been avoided by the use of an unmodified or unaltered release of the Software; or (iii) the combination, operation or use of the Software with software, hardware or other materials not furnished or recommended by Halogen if such infringement would have been avoided without such software, hardware or other materials.

- (c) Remedies. In the event the Software, or a component part thereof is, pursuant to a final decision by a court of competent jurisdiction, held to infringe, or is believed by Halogen to infringe

or potentially infringe, Third Party Rights, Halogen shall, in addition to the indemnification and defence provided for in Section 12(a), and at Halogen's option, (a) modify, at its expense, the Software to be non-infringing, (b) obtain for Customer a license to continue using the Software, or, if the foregoing options are not reasonably practicable, (c) terminate this Agreement and refund Customer all prepaid Fees for that portion of the Term then remaining. This Section 12 shall only apply in respect of a final decision rendered by a court of competent jurisdiction or in respect of a settlement of an infringement action with the prior written consent of Halogen.

- (d) ENTIRE LIABILITY. THE FOREGOING STATES THE ENTIRE LIABILITY OF HALOGEN AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR ANY INFRINGEMENT OF THIRD PARTY RIGHTS.

13. LIMITATION OF LIABILITY

- (a) LIMITATION. IN NO EVENT, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT OR OTHERWISE, SHALL HALOGEN, ITS LICENSORS, OR ITS AFFILIATES, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR CONTRACTORS BE LIABLE TO CUSTOMER FOR: (I) ANY INDIRECT, INCIDENTAL, ORDINARY, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES INCLUDING WITHOUT LIMITATION ECONOMIC LOSS, LOST PROFITS, LOSS OF USE, LOSS OF USE OF PROFITS, REPROCUREMENT COSTS OR LOST OR DAMAGED DATA, EVEN IF HALOGEN OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE, OR IF SUCH DAMAGES ARISE FROM ANY MISREPRESENTATION, BREACH OF ANY IMPLIED OR EXPRESS WARRANTY OR CONDITION, BREACH OF ANY OTHER TERM (INCLUDING A FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM) OR BREACH OF STATUTORY DUTY; OR (II) A MAXIMUM AGGREGATE LIABILITY IN ANY CLAIM, ACTION, DEMAND OR PROCEEDING WHICH EXCEEDS: (A) FOR THE SOFTWARE, THE TOTAL AMOUNT OF THE LICENSE FEE COMPONENT OF THE ANNUAL SOFTWARE LICENSE SUBSCRIPTION FEE ACTUALLY PAID TO HALOGEN BY CUSTOMER DURING THE YEAR IN WHICH THE CLAIM AROSE; OR (B) FOR ANY SERVICES PROVIDED, THE M&S OR HOSTING SERVICES COMPONENT OF THE ANNUAL SOFTWARE LICENSE SUBSCRIPTION FEE, OR THE ANNUAL PROFESSIONAL SERVICES FEE, AS THE CASE MAY BE, PAID BY CUSTOMER TO HALOGEN FOR THE SERVICES GIVING RISE TO THE CLAIM DURING THE YEAR IN WHICH CLAIM AROSE.

- (b) Exceptions. The foregoing limitations on liability shall not apply to: (i) claims caused by Halogen's gross negligence or willful misconduct to either Customer or a third party; or (ii) third party intellectual property claims for which Halogen is required to indemnify Customer pursuant to Section 12.
- (c) Basis of Bargain. The parties acknowledge and agree that the limited warranty, exclusive remedies and limited liability set forth in this Agreement are fundamental elements of the basis of the bargain between Halogen and Customer, and that Halogen would not be able to provide the Software or Services on an economic basis without such limitations.
- (d) Limitation Period. No action, regardless of form, arising out of or in relation to any services may be brought more than two (2) years after the completion of the services to which the action relates.

14. DISPUTE RESOLUTION

All matters of difference between the parties in relation to this Agreement shall be dealt with in accordance with this Section. Notwithstanding the foregoing, no provision hereof shall limit the right of any party to obtain equitable relief, including without limitation,

injunctive relief, from a court of competent jurisdiction before, after or concurrent with mediation, arbitration or other proceeding, provided however that any proceedings which occur in accordance with this Section and are brought by Customer shall be in its individual capacity, and not as a class member in any purported class or representative proceeding. The parties shall attempt to resolve any dispute arising from or relating to this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation for up to fifteen (15) days commencing on the date when one party gives written notice to the other party of any controversy or claim. However, if those attempts fail, the dispute shall be submitted to arbitration. The parties agree that any continuing disputes arising from or related to this Agreement shall be decided pursuant to the then-current Rules of the American Arbitration Association at such a location to be mutually agreed upon by the parties. If the parties cannot agree on a location for the arbitration within ten (10) days, the parties agree that the arbitration will take place in New York, New York. Unless provided otherwise in the Agreement, the arbitrators, at least one of whom shall be knowledgeable about information-technology agreements similar to this Agreement, may not award non-monetary or equitable relief of any sort. They shall have no power to award damages inconsistent with the Agreement or punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitration shall be conducted in the English language. All aspects of the arbitration shall be treated as confidential. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to the other party and shall afford such party a reasonable opportunity to protect its interests. The result of the arbitration and the reasons therefor shall be given in writing, and will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction. The parties agree that the arbitrator's award may only be appealed on a question of law or patent unreasonableness.

EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

15. U.S. GOVERNMENT END USERS

If Customer is a federal government entity or government contractor in the United States of America, the Software is subject to the following restricted rights: use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, or clause 18.52.227-86(d) of the NASA Supplement to the FAR, as applicable. Contractor/Manufacturer is Halogen.

16. AUDIT

Customer is responsible for monitoring its License count. If Customer's deployment is on-premise, Customer agrees to: (i) advise Halogen, upon request, of all locations where Software is used or stored and to provide Halogen reasonable access to such locations and the Software, including any copies; (ii) maintain complete and accurate records (in accordance with generally accepted accounting principles or iFRS, as applicable) relating to its activities under this Agreement; and (iii) upon request, not more than once per twelve (12) month period, certify its current use of the Software including without limitation Customer Size and number of

job descriptions, as applicable. Halogen may, at its expense, appoint an independent third party to audit, no more than once annually, Customer's use of the Software. Any such audit shall be conducted during regular business hours at Customer's office, upon a minimum of five (5) Business Days notice and shall not unreasonably interfere with Customer's business activities. In lieu of the foregoing, and at Halogen's option, Halogen may require Customer to run a license utilization script file not more than once per twelve (12) month period and timely provide Halogen with the results thereof in support of this Section 16. If Customer's deployment is on-demand, Customer acknowledges that Halogen shall have the ability to: (i) audit its use of the Software at any time, with no prior notice to Customer; and (ii) require Customer to certify upon request, not more than once per twelve (12) month period, Customer's current use of the Software including without limitation Customer Size and Job Description Total, as applicable. In addition to other remedies available to Halogen, if any such audit or certification shows that Customer has underpaid the applicable Fees, Customer shall pay such underpaid Fees within thirty (30) days of invoice. If underpaid Fees for any period are in excess of five percent (5%) of the value of the Fees paid for that period under this Agreement, then Customer shall also pay Halogen's reasonable costs of conducting the audit, if any.

17. PUBLICATION

Customer consents to publication of its name and logo by Halogen in a factual listing of Halogen's customers within presentations, on trade show signs and on its website. Halogen shall seek Customer's prior written authorization for any other use of Customer's name or logos. Provided that Customer is satisfied with the Software, Customer agrees to consider: (i) participating in a success story for the Software to be published on Halogen's website and (ii) acting as a client reference for Halogen on an as- and when-needed basis.

18. GENERAL PROVISIONS

- (a) Compliance with Applicable Laws. Each party shall comply with any and all applicable laws, including, but not limited to, export laws.
- (b) Governing Law and Jurisdiction. This Agreement is governed by and is to be construed and interpreted in accordance with the laws of the State of New York, without regard to conflict of laws. The parties expressly disclaim the application of the United Nations Convention on the International Sale of Goods to this Agreement. Subject to Section 14 above, Customer submits to the non-exclusive jurisdiction of the courts of the State of New York, and Halogen submits to the exclusive jurisdiction of the courts of the State of New York.
- (c) Independent Principals. The parties are and shall at all times remain independent principals in all relationships and actions under or contemplated by this Agreement and neither party has the authority to bind the other or to incur any obligations on its behalf. Neither party shall represent itself to be the agent, joint venturer, partner or employee of the other nor shall either party make any statements or take any steps or acts that do or could imply or create any agency, joint venture, partnership, employment or other business relationship between them, other than as expressly hereby contemplated.
- (d) Force Majeure. Subject to Section 7(b), neither party shall be responsible for delays or failure of performance under this Agreement, except for Customer's obligation to pay the Fees, to the extent resulting from causes that are beyond the reasonable control of such party and which render the continued performance of this Agreement impossible, impractical or illegal, including, but not limited to, fire, flood, explosion, tornado, epidemic, earthquake, snowstorm, ice storm or other act of God, embargo, explosion, malfunction, riots, civil disputes, acts of terrorism or war, failure of the Internet or government controls or regulations ("Force Majeure"). The existence of such causes of such delay or failure shall extend the period for performance to the extent necessary to enable complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed.
- (e) Assignment and Benefit. Other than as permitted under Section 2 of this Agreement, Customer may not assign all or part of this Agreement without Halogen's prior written consent. Notwithstanding the foregoing, either party may assign this Agreement in its entirety without consent of the other party to its successor in interest in connection with a sale of all or substantially all assets or equity not involving a direct competitor of the other party. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties.
- (f) Notice. All notices, requests, demands and other communications required or permitted under this Agreement must be in writing and are deemed to have been duly given, if sent by fax (receipt confirmed), on the day it is received, if delivered in person or by courier, when delivered, if mailed by registered or certified mail, postage paid and return receipt requested, from within the United States or Canada, on the fourth Business Day following the date of mailing, or if from outside of the United States or Canada, on the tenth Business Day, to the addresses of the parties given on the first page of the Agreement or to such other address as a party may from time to time specify by notice in writing to the other party. Notices to Halogen shall be made to the attention of the Chief Financial Officer. A notice deemed to have been received after 5 p.m. on a Business Day, or on a day which is not a Business Day at the place of receipt, shall be deemed to have been received at 9 a.m. on the first Business Day thereafter at the place of receipt.
- (g) Severability. The provisions of this Agreement shall be deemed severable. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.
- (h) Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.
- (i) Language. The parties confirm that: (i) it is their wish that this Agreement, as well as all other documents relating to this Agreement, including notices, be drawn up in English; (ii) any and all Services provided pursuant to this Agreement, Appendices B, C and D to this Agreement and any applicable Services Agreement shall be provided in English; and (iii) the English language shall be controlling in all respects.
- (j) Conflict. In the event of a conflict between this Agreement and a Services Agreement, this Agreement shall prevail to the extent necessary to resolve the conflict.
- (k) Contracts (Rights of Third Parties) Act 1999. This Agreement is not intended to confer rights on third parties.

APPENDIX A

DESCRIPTION OF THE SOFTWARE

Halogen Performance™

Halogen Performance™ is licensed in units of "Review Licenses". The number of Review Licenses limits the number of employees or contractors of Customer that can be appraised each calendar year. A Review License allows an employee or contractor of Customer to be appraised with Halogen Performance™ by an unlimited number of Respondents an unlimited number of times during the calendar year. Review Licenses are consumed whenever activity occurs, related to an individual who is the subject of an evaluation, during the period in which the individual is part of an open appraisal process. A single individual (for example, an employee or contractor) will only consume a single Review License during a calendar year period regardless of the number of appraisal processes that are opened against that single individual. Generally speaking, activity related to an individual listed in the Software's User Center who is not the subject of an evaluation or appraisal during a calendar year period will not consume a Review License; provided however, that notwithstanding the foregoing, use of Halogen Performance™ to perform the following activities does not fall within the foregoing exemption (i.e. Customer's performance of such activities will consume a Review License per employee): goals management, journaling, talent profiling and/or development planning outside any process. For purposes of clarity, a Review License used by Customer to appraise an employee who subsequently leaves their employ cannot be re-used to appraise another employee within the same calendar year. "Respondents" means the employees or contractors of Customer who are authorized by Customer to access the Software for purposes of conducting a Review.

Halogen 360 Multirater™

Halogen 360 Multirater™ is an optional add-on module to Halogen Performance™. The number of units of this add-on module must be equal to the number of units of Halogen Performance™ licensed by Customer. This module must be licensed if Customer licenses the Professional Services version of Halogen Performance™.

Halogen Compensation™

Halogen Compensation™ is licensed in units of "Participant Licenses". The number of Participant Licenses limits the number of employees or contractors of Customer that can be reviewed for compensation adjustment each calendar year. A Participant License allows an employee or contractor of Customer to be reviewed with Halogen Compensation™ by an unlimited number of Respondents, an unlimited number of times during the calendar year. "Respondents" means the employees or contractors of Customer who are authorized by Customer to access the Software for purposes of conducting a compensation adjustment Review. When sold as an add-on module to Halogen Performance™, the number of units of the Compensation™ module must be equal to the number of units of Halogen Performance™ licensed by Customer.

Halogen Learning™

Halogen Learning™ is an optional add-on module to Halogen Performance™. The number of units of this add-on module must be at least equal to the number of units of Halogen Performance™ licensed by Customer. Halogen Learning™ is licensed in units of "Enrollment Licenses". An Enrollment License allows an employee or contractor of Customer to either self-enroll or be enrolled by their manager or HR System Administrator in one or more learning activities during a given calendar year. A single individual will only consume a single Enrollment

License during such calendar year period regardless of the number of learning activities in which that single individual is enrolled. For purposes of clarity, an Enrollment License used by Customer to enroll an employee who subsequently leaves their employ cannot be used to enroll another employee within the same calendar year.

SCORM for Learning™

Halogen Learning™ includes SCORM functionality. This functionality allows for SCORM conformant courseware to be imported into the courseware library and delivered to the end-user in a special "player" that tracks progress and reports completion to Learning™. Learners launching AICC HASP, SCORM 1.2 and SCORM 2004 (all editions) conformant learning activities can bookmark their location in a course; progress and completion is automatically updated in their development plan. Without this functionality, any courseware launched will not be capable of bookmarking or passing back test results.

Single Sign-on (SSO) Connectivity Option

The Single Sign-on Connectivity Option is available in a number of standard versions. Following execution of the Agreement, Halogen Customer Support will contact the Customer's designated IT contact to review installation and environment configuration requirements. Customer and Halogen will mutually determine and agree in writing during the Software implementation process which version of SSO best suits Customer's requirements and deployment method. Once the Customer environment is in place, Halogen will assist Customer with its SSO installation and configuration in respect of a single designated site via a web-based session. Customer is responsible for all configuration elements related to its internal environment, including without limitation, web portal development & management, the purchase and installation of encryption certificates, domain controller setup & management and/or user directory configuration.

Halogen® HRIS Connect™ Connectivity Option

Halogen® HRIS Connect™ is an optional utility that is suitable for use by on-demand customers as well as on-premise customers with a third-party hosted HRIS system. It eliminates the need for any manual effort when importing employee data into the User Center of Halogen Talent Space™. It runs as Windows Service, installed locally within Customer's network, and can retrieve updated employee information from two types of sources, a CSV file or a SQL database. The HRIS utility is configured only once, after which it runs unattended according to Customer's schedule. Halogen will assist Customer with related installation and configuration requirements and will discuss data layout requirements with Customer. Customer is responsible for ensuring source data is available to the HRIS utility in the appropriate format. As part of the configuration, Customer will also determine how often, and at what time, the transfer of information will occur.

Features and Functionality of Halogen Software Products

The foregoing description of the Software and Software modules is provided for information purposes only. Customer acknowledges that the description of the Software may be subject to change, and that the actual features and functionality of the Software may vary from the descriptions herein.

APPENDIX B

MAINTENANCE & SUPPORT SERVICES

1. DEFINITIONS

"Severity Level" means the level of severity assigned to an Error in the Halogen Software by Halogen and Customer using the following criteria.

Severity Level	Description
1	An Error that has a critical impact on the development, deployment, or operational use of the Software, resulting in the inability to continue to deploy or use the Software as required or intended. A Severity 1 Error does not have a reasonable workaround, cannot reasonably be corrected by adding to or changing the Documentation.
2	An Error that causes a severe restriction on the development, deployment, or operational use of the Software, resulting in the restricted ability to continue to deploy or use the Software. A Severity 2 Error does not have a reasonable workaround, cannot reasonably be corrected by adding to or changing the Documentation.
3	An Error that causes limitations which are not critical or severe to the development, deployment, or operational use of the Software. A Severity 3 Error has a reasonable workaround.
4	An Error that causes a slight inconvenience to the development, deployment, or operational use of the Software. A Severity 4 Error has a reasonable workaround.

2. MAINTENANCE & SUPPORT SERVICES

MAINTENANCE

Halogen will provide to Customer, at no additional charge, any Updates to the Software that Halogen makes available to its clients generally. Unless Customer is on-premise, Halogen is responsible for the installation of all Updates. Customer acknowledges and agrees that certain Updates may be provided without notification, including, without limitation, high priority and necessary fixes and features, security patches and performance patches.

SUPPORT

Standard second level support is included in Halogen's M&S Services offering. Halogen will also provide to Customer telephone or email assistance by a qualified representative on a 7 x 24 basis to attempt to correct or bypass Errors that have been brought to the attention of Halogen by Customer. Halogen may provide such telephone assistance through a designee of its choice to up to three (3) designated contacts of Customer who are trained and knowledgeable in the use of the Software. Halogen provides emergency Support only, on the following holidays: New Years Day; Labor Day; Christmas Day.

Halogen will make commercially reasonable efforts to solve reported Errors in accordance with the Severity Level classifications and the response times listed below, through system changes or suggested workarounds. If the Halogen Services are unavailable to end users, Customer will use commercially reasonable efforts to cooperate with Halogen in resolving any problems.

Halogen shall provide a tiered support process to Customer, providing a controlled escalation environment which delivers multiple levels of support as deemed appropriate for Customers' individual issues. Response time varies depending on the severity of the Error. Each Error is assigned a Halogen support ticket which is either fulfilled by the Support Technician, or escalated to the Support Manager as required.

If the support ticket requires further escalation, the assistance of other Halogen technicians is enlisted by the Support Manager.

When reporting a suspected Error, Customer will assign the appropriate Severity Level category, which, in Customer's reasonable judgment, accurately describes the impact on Customer's operating environment. Halogen reserves the right to reclassify the Error if it determines, in its reasonable judgment, that such reclassification is appropriate. Where the parties disagree on the classification, Halogen will review the Error with Customer to attempt to agree on a mutually acceptable classification.

Severity Level Response Times:

Severity Level	Response Time
1	Acknowledge within 4 (four) hours; response within one (1) day.
2	Acknowledge within 4 (four) hours; response within two (2) days.
3	Acknowledge within 1 (one) day; response within seven (7) days.
4	Acknowledge within 2 (two) days; response at the discretion of Halogen.

3. SUPPORTED RELEASES

If Customer's deployment is on-demand, M&S Services are only provided for the Update of the Software installed by Halogen for Customer.

If Customer's deployment is on-premise, M&S Services are only provided for the two most recent Updates made available by Halogen to Customer. For clarity, in addition to the foregoing, M&S Services shall also be provided for any and all fixes, patches and other minor improvements denoted by an increment to the Software's number two places to the right of the decimal point to which the two most recent Updates relate that are generally commercially distributed by Halogen as part of the M&S Services and for which Halogen does not impose a separate charge or license separately (i.e. if 11.2 and 11.3 are the two most recent Updates made available, M&S Services shall also be provided for 11.2.1, 11.2.2, 11.2.3 and 11.3.1).

Halogen has no obligation to provide M&S Services to Customer in relation to Updates other than as described above.

4. CUSTOMER RESPONSIBILITIES

The M&S Services are only provided to Customer. Unless otherwise agreed by the parties, Customer is solely responsible for first level support of its Affiliates and employees.

Customer will make commercially reasonable efforts to cooperate with Halogen in all problem resolutions. This includes but is not limited to providing timely access to all required experts to resolve issues within Customer's environment.

If Customer's deployment is on-premise, Customer will protect its data from loss by implementing appropriate back-up procedures. Customer is solely responsible for data restoration from back-ups.

5. EXCLUSIONS

If Customer's deployment is on-premise, Halogen shall have no obligation to provide M&S Services if an Error is caused by: (a) relocation, movement, improper operation, neglect or misuse of the Software, (b) Customer's failure to maintain proper site or environmental conditions, or (c) failure or interruption of any electrical power, telephone or communication line or like cause.

If Customer's deployment is either on-premise or on-demand, Halogen shall have no obligation to provide M&S Services if an Error is caused by: (a) any fault of Customer's agents or employees, (b) any attempts at repairs, maintenance, or modifications to the Software performed by other than authorized service personnel of Halogen, (c) unauthorized acts of third parties, (d) service for the Software for which all required Updates have not been implemented by Customer in accordance with Section 3 above, (e) problems caused by third party software included with or embedded in the Software (unless Customer is using a version of the Software for which support for such third party software is available to Halogen or Halogen has agreed to the inclusion of such third party software), (f) any other cause external to the Software except ordinary use, (g) configuration of or failure of third party hardware or software products, (h) improper sizing of hardware or software platforms for the volume of data and users, or (i) any other service not expressly set out in this Appendix B or which is expressly excluded in this Appendix B.

The M&S Services do not include services or deliverables provided under a Services Agreement or other services outside the scope of this Appendix B such as support for unsupported releases of the Software. Maintenance and support of such items may be obtained by Customer under a Professional Services engagement.

6. HARDWARE COMPONENT FAILURE

Halogen is not responsible for Customer's hardware nor any components that enable Customer to access Halogen's on-demand data center.

7. TERM AND TERMINATION OF MAINTENANCE AND SUPPORT SERVICES

Upon payment of the applicable Fees, Halogen will provide M&S Services to Customer during the Term. In the event of abusive or unprofessional conduct by one party which the other party determines materially affects its ability to

deliver the M&S Services described herein, such party shall so advise the other party and representatives of each party's senior management shall attempt to resolve such conduct issues, failing which, the party's representative being complained of shall be replaced.

M&S Services are mandatory for the entire duration of the Term.

APPENDIX C

ON-DEMAND HOSTING SERVICES

1. HOSTING OF SOFTWARE

If applicable, Halogen will provide on-demand Hosting Services for the Software on its server for the benefit of Customer for the Term of the Agreement, unless such Hosting Services are terminated in accordance with Section 6 of this Appendix C. Halogen shall provide the Software to Customer in a secure environment, including protecting the infrastructure from the external environment via firewall systems and protecting data transmission over secure network connections using SSL technology. Root/Administrator access will be controlled and limited to those that require access to support the platform. The Software will be operated in an electronically restricted facility on a raised floor with redundant HVAC, UPS and diesel generator power back-up, and 24x7x365 surveillance of all hosted infrastructure and environmental subsystems. All elements of the selected platform are clustered for redundancy. As a standard service, Halogen currently conducts daily encrypted incremental back-ups, and weekly and monthly encrypted full back-ups. All back-ups are stored at an off-site location. Weekly back-ups are rotated every 4 weeks; monthly back-ups are stored for 1 year. Charges may apply should immediate restore of off-site back-ups be required through no fault of Halogen. Unless otherwise agreed by the parties, the Hosting Services shall be provided in respect of one (1) hosted site only.

2. CUSTOMER RESPONSIBILITIES

Customer's responsibilities include: (i) complying with all terms and conditions imposed by Halogen in association with Customer's enjoyment of the Hosting Services (as provided to Customer by Halogen from time to time); (ii) enabling its own reliable high speed internet connectivity to and from the hosted server (in respect of all locations that need access to the hosted Software); (iii) its own customer premises equipment ("CPE"), including but not limited to administrator and end user workstations; (iv) all other customer relations, fulfillment and obligations; (v) if applicable, all design and development of the Reviews; and (vi) all configuration, use and operation of the Software application to suit Customer's environment (collectively, "Designated Customer Obligations"). Customer acknowledges and agrees that: (A) the Designated Customer Obligations may change from time to time in conjunction with Updates to the Software; and (B) a failure of Customer to comply with this provision may, to the extent applicable, negate any support obligations on the part of Halogen. Customer shall be responsible for all users who access Halogen's servers and/or the Software. Customer will provide a primary contact who can be reached by Halogen in the event of scheduled maintenance or a service loss, and will provide Halogen with updates to the primary contact's contact information in writing or by email.

Customer shall not: (i) copy or attempt to copy the Software; (ii) manipulate or alter any data or other information on Halogen's servers other than Customer's data; or (iii) utilize any automated system to access or to test the Hosting Services or the Software, without the prior express written permission of Halogen. Halogen reserves the right to immediately suspend Hosting Services for any Customer who breaches the provisions of this Section.

3. SECURITY OF HOSTING SERVICES

Customer understands and agrees that Halogen will take commercially reasonable precautions to ensure the Hosting Services are secure. However, Customer acknowledges that the hosting activities will require transmission of confidential information over the internet, and that the internet consists of multiple participating networks that are not subject to the control of Halogen. Customer therefore understands and agrees that Halogen cannot and does not guarantee the privacy, security or authenticity of any information transmitted over the internet, due to the nature of the internet. Halogen has made provisions to increase the security of all data transfers by ensuring all data transfers are done using a minimum 128-bit SSL encryption. As the Halogen hosting environment evolves with new technologies, Halogen will use reasonable commercial efforts to maintain an equivalent or better level of security and confidentiality of Customer's data.

As part of our ongoing commitment to security, Halogen regularly engages third party experts to perform independent security audits. These audits ensure all systems remain efficient in protecting valuable client information. Halogen will provide assurance reports upon Customer request at no charge, once per calendar year; additional requests for assurance reports during a calendar year will be charged at the rate of US\$500.00 per request. To ensure ongoing security of all customer data, all sensitive data will be removed prior to delivery to Customer. Halogen will notify Customer of any known breach of its security related to areas, locations, or computer systems which contain any Confidential Information of Customer in a timely manner following such breach and shall cooperate with Customer to assist in regaining possession of the Confidential Information and prevent its further unauthorized use, and take any necessary remedial actions.

4. MAINTENANCE AND UPDATES

Halogen technicians and automated monitoring systems continually assess the health of the Hosting Services. Halogen's Hosting Services are designed for full availability; however, Halogen reserves the ability to schedule downtime during the following maintenance windows: Saturday between 01:00 pm and 07:00pm ET; and/or each evening between 00:00am and 2:00am ET. Halogen will make commercially reasonable efforts to notify Customer of scheduled maintenance (other than maintenance scheduled during the above maintenance windows) at least twenty-four (24) hours in advance. Halogen is solely responsible for updating the Software for Customers who have purchased Hosting Services.

5. OWNERSHIP, CONFIDENTIALITY AND USE OF CUSTOMER DATA

Customer shall retain all right, title and interest in and to, and have the exclusive use of, the results of Customer's data and Halogen shall have no right, title or interest therein, except as expressly provided herein. Customer may access the electronic records and reports containing such data that are generated by the licensed Software. Subject to Section 6(b) of Schedule A, during the Term, in no event shall Halogen deny Customer access to Customer's data for purposes of backup or retrieval. Use of such data and other information by Customer is at Customer's own risk.

Halogen may use Customer's data for (a) the purpose of generally improving the look and feel of the Software; (b) compiling statistical and performance information related to its provision of the Software and/or Services; and (c) developing and distributing benchmarks and similar reports and databases therefrom. Halogen may make this information publicly available so long as Halogen, with respect to (b) and (c), above, (i) first removes all references to Customer and any personal information included in the data; (ii) presents such data in the form of aggregate benchmarks; and (iii) generates and publishes benchmarks only when such benchmarks include data from at least seven (7) other organizations. For back-up or testing purposes, Halogen may make copies of Customer's data and any electronic records and reports containing such data and maintain such copies for its records during the Term. Halogen may, after the Term, maintain back-up copies of Confidential Information received from Customer in a secure site, provided such back-up copies are destroyed in accordance with Halogen's then applicable timeline and policies for destruction of all of Halogen's back-up data.

Customer data and any electronic records and reports containing such data that are stored on Halogen's servers are Confidential Information as defined in Section 9 of Schedule A to this Agreement and may, depending on their nature, include Personal Information as defined in Section 10 of Schedule A to this Agreement. Halogen confirms that its obligations set out in Sections 9 and 10 of Schedule A to this Agreement apply to such data, records and reports.

6. TERMINATION OF HOSTING SERVICES

Halogen may terminate the Hosting Services: (i) immediately, if Customer fails to pay the applicable Hosting Services Fees as required by this Agreement; or (ii) upon 180 days notice in the event Halogen generally ceases to provide Hosting Services for the Software licensed by Customer, in which event Halogen shall refund the balance of any prepaid but unused Hosting Services Fee.

Following the initial subscription term (as identified in Section 1 on Page 1 of this Agreement), if, in accordance with Section 7 of Schedule A, Customer renews the Agreement for subsequent successive one year terms, Customer shall either: (i) elect to not renew the Hosting Services at the end of any such initial subscription term by providing Halogen with at least thirty (30) days prior written notice of its intention to terminate; or (ii) renew the Hosting Services in accordance with such Section.

Upon written request from Customer received within ten (10) Business Days of the effective termination date of the Hosting Services, Halogen will: (i) electronically deliver to Customer a copy of the Customer's most recent full data back-up; and (ii), if requested, provide Customer with a quotation and Services Agreement for Customer's consideration with respect to conversion of the data from Halogen's then-current Oracle format to a Halogen-supported version of SQL. If further data manipulation in respect of such data is required by Customer, Customer shall request same and Halogen will provide a Services Agreement for Customer's consideration. No data manipulation services will be undertaken by Halogen until Customer has approved and paid for the associated costs in accordance with the applicable Services Agreement.

APPENDIX D

PROFESSIONAL SERVICES (INSTALLATION, CONSULTING, TRAINING, CONVERSION AND DATABASE SERVICES)

Customer acknowledges and agrees that its use of the Software, and specifically its entitlement to receive M&S Services, requires payment of both a One-Time Professional Services Fee and an Annual Professional Services Fee. The specific Professional Services included in the Implementation Services Package selected by Customer are as follows:

1. CERTAIN TO SUCCEED SERVICES: INITIAL LAUNCH AND CONTINUOUS ADVANCEMENT – LEVEL III

Halogen offers the following Certain to Succeed Services: Initial Launch and Continuous Advancement for Halogen Performance™, Halogen 360 Multirater™, Halogen Compensation™ and Halogen Learning Manager™:

(n) Initial Launch – Level III – One-Time Professional Services for installation, consulting and training:

i. A Halogen Implementation Consultant will be assigned to work with Customer remotely to ensure proper implementation of the Halogen product(s) licensed and to assist Customer in the launch of their EPM project, for a total of 40 sessions, up to eighty (80) hours (inclusive of configuration and project planning). Deliverables include:

- Use of the formal Halogen implementation methodology including the Halogen implementation Workbook
- Halogen project tracking
- Weekly status updates
- One (1) soft copy of custom Halogen Configuration Summary Report
- Performance of the following configuration tasks by Halogen's Professional Services team:

- If Halogen Performance™ Initial Launch is purchased, Level III component includes:
 - up to sixteen (16) sessions (32 hours in total) with a Halogen Implementation Consultant

- initial 1 day onsite working session with the Implementation Consultant for project kickoff, requirements gathering and project planning

- configure up to three (3) Halogen Performance™ processes with up to five (5) form templates to be used in the configured processes, using standard Halogen TalentSpace™ functionality and competencies

- If Halogen Performance™ Professional Services Initial Launch is purchased, component includes:

- up to twelve (12) sessions (26 hours in total) with a Halogen Implementation Consultant
 - configure up to two (2) Halogen Performance™ processes with up to three (3) form templates to be used in the configured processes, using standard Halogen TalentSpace™ functionality and competencies
 - configure up to three (3) Halogen 360 Multirater™ questionnaires to be used in the configured process(es)

- If Halogen Performance™ Healthcare Initial Launch is purchased, component includes:

- up to twelve (12) sessions (26 hours in total) with a Halogen Implementation Consultant
 - consulting regarding process, form design and reporting to prepare for Joint Commission, OSHA, ACHA, CCHSA, Magnet and other accreditation reviews for up to two (2)

Halogen Performance™ processes with up to three (3) form templates to be used in the configured processes, using standard Halogen TalentSpace™ functionality and competencies

- If Halogen 360 Multirater™ Initial Launch is purchased, Level III component includes:

- up to four (4) sessions (8 hours in total) with a Halogen Implementation Consultant
 - initial 0.25 day onsite working session with the Implementation Consultant for project kickoff, requirements gathering and project planning
 - configure up to two (2) Halogen 360 Multirater™ questionnaires to be used in the configured Halogen Performance™ template(s) noted above

- If Halogen Compensation™ Initial Launch is purchased, Level III component includes:

- up to eight (8) sessions (16 hours in total) with a Halogen Implementation Consultant
 - initial 0.5 day onsite working session with the Implementation Consultant for project kickoff, requirements gathering and project planning
 - configure one (1) Halogen Compensation™ process

- If Halogen Succession™ Initial Launch is purchased, Level III component includes:

- Phase 1: Assessment of Workforce Potential
 - up to three (3) sessions (8 hours in total) with a Halogen Implementation Consultant
 - initial 0.25 day onsite working session with the Implementation Consultant for project kickoff, requirements gathering and project planning

- integrate assessment questions in the three (3) Halogen Performance™ processes and up to five (5) form templates noted above to gather Halogen Succession™ talent profile data

- configure the Halogen Succession™ High Potential Report

- configure the Halogen Succession™ Retention Risk Report

- Phase 2: Implementation of Talent Pools and Talent Assessment

- up to ten (10) sessions (20 hours in total) with a Halogen Implementation Consultant
 - initial 0.5 day onsite working session with the Implementation Consultant for project kickoff, requirements gathering and project

- planning
 - configure up to three (3) Halogen Succession™ Talent Assessment processes, including the creation of up to five (5) Talent Pools
 - configure the Talent Pool Report
- If Halogen Learning™ Initial Launch is purchased, Level III component includes:
 - up to twelve (12) sessions (24 hours in total) with a Halogen Implementation Consultant
 - initial 0.5 day onsite working session with the Implementation Consultant for project kickoff, requirements gathering and project planning
 - integrate Halogen Learning™ content into up to three (3) pre-existing Halogen Performance™ processes and up to five (5) pre-existing Halogen Performance™ form templates
 - configure up to twenty (20) learning objects
 - configure up to three (3) approval policies
- If Halogen Job Description Builder™ Initial Launch is purchased, Level III component includes:
 - up to fourteen (14) sessions (28 hours in total) with a Halogen Implementation Consultant
 - initial 0.5 day onsite working session with the Implementation Consultant for project kickoff, requirements gathering and project planning
 - configure up to three (3) job description processes and five (5) job description templates
- If Halogen Talent Acquisition™ Initial Launch is purchased, Level III component includes:
 - up to ten (10) sessions (20 hours in total) with a Halogen Implementation Consultant
 - initial 0.5 day onsite working session with the Implementation Consultant for project kickoff, requirements gathering and project planning
 - configure up to one (1) job requisition template
 - configure up to one (1) application form
 - integration with client corporate website
- If Halogen® 1:1 Exchange™ Initial Launch is purchased, all levels include:
 - up to one (1) session (2 hours in total) with a Halogen Implementation Consultant
 - configure 1:1 functionality, including feedback types and conversation starters
- If Halogen® Myers-Briggs® Initial Launch is purchased, all levels include:
 - up to five (5) sessions (10 hours in total) with a MBTI certified Halogen Consultant
 - configure up to one (1) MBTI assessment process

- ii. On-demand: Halogen performs Software installation by creating application site for Customer in Halogen's on-demand hosting environment and providing access to Customer. OR

On-premise: Halogen assists Customer in Software installation through web-based Technical IT installation and Technical Training session (including user import if Customer is ready). In order to enable Halogen to perform configuration activities including those set out above, Customer must allow authorized Halogen representatives to remotely access Customer's on-premise environment.

- iii. Halogen provides standard Software training maximum of five (5) attendees per class including trainees and observers, on-site at Customer's premises, at Halogen's Training Center in Ottawa, Canada, or delivered online
- If Halogen Performance™ is licensed, 1.5 days of Administrator training
 - If Halogen Performance™ Professional Services (includes Halogen 360 Multitrainer™) is licensed, 2.0 days of Administrator training
 - If Halogen Performance™ Healthcare is licensed, 1.5 days of Administrator training
 - If Halogen 360 Multitrainer™ is licensed, 0.5 day of Administrator training
 - If Halogen Compensation™ is licensed, 0.5 day of Administrator training
 - If Halogen Succession™ is licensed, 0.5 day of Administrator training
 - If Halogen Learning™ is licensed, 0.5 day of Administrator training
 - If Halogen Job Description Builder™ is licensed, 0.5 day of Administrator training
 - If Halogen eRecruitment™ is licensed, 0.5 day of Administrator training

If Customer allows more than five (5) attendees per class as limited above, Halogen reserves the right to invoice Customer at a rate of US\$375.00 per additional attendee.

Halogen provides applicable Administrator Reference Manual(s), End User Guide(s), and tutorials in electronic format for the Software product(s) licensed and implemented.

- (b) Continuous Advancement – Level III – Annual Professional Services (consulting and training) for administrators, managers and employees. A total of 22 hours will be provided during each year of the Term.

Halogen provides training and phased consulting services during each year of the Term. These services evaluate, analyze and report on processes, assist the Customer to launch the next process(es) and include annual access to 24x7 on demand training content for administrators, managers and employees (as defined below).

- If Halogen Performance™ Continuous Advancement is purchased, Level III component includes up to eight (8) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Metrics Review and Analysis – up to four (4) hours of consulting with a Halogen Implementation Consultant to evaluate review reports and create an action plan from the process(es) created as per Section 1 (a) of this Appendix D
 - Process Optimization – up to four (4) hours of consulting with a Halogen Implementation Consultant to implement relevant items from action plan outlined in the Metrics Review and Analysis service and assist Customer in the re-launch of the subsequent process created as per Section 1(a) of this Appendix D
 - Unlimited access to Halogen Performance™ administrator training content for up to five (5) Halogen administrators
 - Unlimited access to Halogen Performance™ Essential Training program for Managers and Employees

- If Halogen Performance™ Professional Services Continuous Advancement is purchased, component

includes up to eight (8) hours in total each year with a Halogen Implementation Consultant to perform the following:

- Metrics Review and Analysis – up to four (4) hours of consulting with a Halogen Implementation Consultant to evaluate, review reports and create an action plan from the process(es) created as per Section 1 (a) of this Appendix D
- Process Optimization – up to four (4) hours of consulting with a Halogen Implementation Consultant to implement relevant items from action plan outlined in the Metrics Review and Analysis service and assist Customer in the re-launch of the subsequent process created as per Section 1(a) of this Appendix D
- Unlimited access to Halogen Performance™ and Halogen 360 Multitrainer™ administrator training content for up to five (5) Halogen administrators
- Unlimited access to Halogen Performance™ and Halogen 360 Multitrainer™ Essential Training program for Managers and Employees
- If Halogen Performance™ Healthcare Continuous Advancement is purchased, component includes up to eight (8) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Metrics Review and Analysis – up to four (4) hours of consulting with a Halogen Implementation Consultant to evaluate, review reports and create an action plan from the process(es) created as per Section 1 (a) of this Appendix D
 - Process Optimization – up to four (4) hours of consulting with a Halogen Implementation Consultant to implement relevant items from action plan outlined in the Metrics Review and Analysis service and assist Customer in the re-launch of the subsequent process created as per Section 1(a) of this Appendix D
 - Unlimited access to Halogen Performance™ administrator training content for up to five (5) Halogen administrators
 - Unlimited access to Halogen Performance™ Essential Training program for Managers and Employees
- If Halogen 360 Multitrainer™ Continuous Advancement is purchased, Level III component includes up to four (4) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Process Review and Analysis – up to two (2) hours of consulting to evaluate process efficiency and create an action plan from the process(es) created as per Section 1 (a) above
 - Process Optimization – up to two (2) hours of consulting to assist Customer in the re-launch of the subsequent process(es) created as per Section 1(a) of this Appendix D
 - Unlimited access to Halogen 360 Multitrainer™ administrator training content for up to five (5) Halogen administrators
 - Unlimited access to Halogen 360 Multitrainer™ Essential Training program for Managers and Employees
- If Halogen Compensation™ Continuous Advancement is purchased, Level III component includes up to four (4) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Metrics Review and Analysis – up to two (2) hours of consulting to evaluate, review reports and create an action plan from the process(es) created as per Section 1 (a) of this Appendix D
 - Process Optimization – up to two (2) hours of consulting to implement relevant items from

action plan outlined in the Metrics Review and Analysis service and assist Customer in the re-launch of the subsequent process created as per Section 1(a) of this Appendix D

- Unlimited access to Halogen Compensation™ administrator training content for up to five (5) Halogen administrators
- Unlimited access to Halogen Compensation™ Essential Training program for Managers
- If Halogen Succession™ Continuous Advancement is purchased, Level III component includes up to XX (X) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Halogen Succession™ Phase 1: Assessment of Workforce Potential includes up to three (3) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Metrics Review and Analysis – up to two (2) hours of consulting to evaluate, review reports and create an action plan
 - Process Optimization – one (1) hour of consulting to implement relevant items from action plan outlined in the Metrics Review and Analysis service and assist Customer in the re-launch of the subsequent process(es) created as per Section 1(a) of this Appendix D
 - Unlimited access to Halogen Succession™ administrator training content for up to five (5) Halogen administrators
 - Unlimited access to Halogen Succession™ Essential Training program for Managers
 - Halogen Succession™ Phase 2: Talent Pools and Talent Assessments includes up to five (5) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Metrics Review and Analysis – up to three (3) hours of consulting to evaluate, review reports and create an action plan
 - Process Optimization – up to two (2) hours of consulting to implement relevant items from action plan outlined in the Metrics Review and Analysis service and assist Customer in the re-launch of the subsequent process(es) created as per Section 1(a) above of this Appendix D
- If Halogen Learning Manager™ Continuous Advancement is purchased, Level III component includes up to six (6) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Metrics Review and Analysis – up to three (3) hours of consulting to evaluate, review reports and create an action plan
 - Process Optimization – up to three (3) hours of consulting to implement relevant items from action plan outlined in the Metrics Review and Analysis service and assist Customer in updating/adding learning objects and approval policies as per Section 1(a) of this Appendix D
 - Unlimited access to Halogen Learning Manager™ administrator training content for up to five (5) Halogen administrators
 - Unlimited access to Halogen Learning Manager™ Essential Training program for Managers and Employees
- If Halogen Job Description Builder™ Continuous Advancement is purchased, Level III component includes up

to seven (7) hours in total each year with a Halogen Implementation Consultant to perform the following:

- Competency Library Review and Action Planning – up to three (3) hours of consulting to conduct a focused analysis of the results and create an action plan
 - Process Optimization – up to four (4) hours of consulting to implement relevant items from action plan outlined in the Competency Library Review and Action Planning service and assist Customer in the re-launch of the subsequent process(es) created as per Section 1(a) of this Appendix D
 - Unlimited access to Halogen Job Description Builder™ administrator training content for up to five (5) Halogen administrators
 - Unlimited access to Halogen Job Description Builder™ Essential Training program for Managers
- If Halogen Talent Acquisition™ Continuous Advancement is purchased, Level III component includes up to eight (8) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Metrics Review and Analysis – up to four (4) hours of consulting to evaluate metrics, review stages and activities and create an action plan as per deliverables identified in Section 1 (a) of this Appendix D
 - Process Optimization – up to four (4) hours of consulting to implement relevant items from action plan outlined in the Metrics Review and Analysis service
 - Unlimited access to Halogen eRecruitment™ administrator training content for up to five (5) Halogen administrators
 - Unlimited access to Halogen eRecruitment™ Essential Training program for Managers
 - If Halogen® 1:1 Exchange™ Continuous Advancement is purchased, all Levels include up to two (2) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Metrics Review and Analysis – up to one (1) hour of consulting to evaluate metrics, review stages and activities and create an action plan as per deliverables identified in the Initial Implementation
 - Process Optimization – up to one (1) hour of consulting to implement relevant items from action plan outlined in the Metrics Review and Analysis service
 - Unlimited access to Halogen® 1:1 Exchange™ on-demand tutorials for up to two (2) Halogen administrators
 - If Halogen® Meyers-Briggs® Continuous Advancement is purchased, all Levels include up to four (4) hours in total each year with a Halogen Implementation Consultant to perform the following:
 - Metrics Review and Analysis – up to two (2) hours of consulting to evaluate metrics, review stages and activities and create an action plan as per deliverables identified in Section 1 (a) of this Appendix D
 - Process Optimization – up to two (2) hours of consulting to implement relevant items from action plan outlined in the Metrics Review and Analysis service

2. TRAINING MATERIALS & COPYRIGHT

Training materials are available only for the current standard release of the Software product(s) licensed by Customer, and are only available where Customer has paid the applicable Annual Professional Services Fee pursuant to Section 6 of Schedule A to the Agreement. Customer acknowledges that any reference materials provided by Halogen to Customer in electronic or hard copy format in connection with training and/or consulting services are the copyright of Halogen and are to be used by Customer for its internal use only.

Unless otherwise directed by Halogen, these materials are not to be reproduced, copied or distributed by Customer in any form other than as required to train Customer's employees. Videotaping or other electronic and/or audiovisual recording of a training or consulting session conducted by a representative of Halogen is strictly prohibited.

3. OTHER PROFESSIONAL SERVICES

Additional Professional Services may be procured from Halogen upon request by Customer and execution of a Services Agreement in accordance with the Agreement and this Appendix D.

Customer may also request additional consulting services from their Halogen implementation consultant if required. Halogen's current rates for such consulting services are as follows: US\$1650/month, which would entitle Customer to work with a Halogen implementation consultant (approximately 2 hours per week to a maximum of 8 hours total per month) doing various tasks to assist Customer. This includes but is not limited to meetings, forms or process reviews or other tasks as discussed with Customer during regular weekly meetings. Alternatively, Customer may contract for hourly assistance. Halogen's current rates are US\$250/hour (web-based or telephone consulting), or US\$1650/day (on-site consulting) plus travel & living expenses. Halogen would be pleased to provide any or all of the above services by separate quote pursuant to a Services Agreement.

4. CHANGE REQUESTS

Either party may, from time to time, wish to make changes to the Professional Services or deliverables as set out in a Services Agreement ("Change Request"). Halogen and Customer will negotiate in good faith any changes to costs, scope or delivery schedules arising from any requested Change Request. Halogen will provide Customer with a quote for the mutually acceptable changes in the scope or timing of the Professional Services, and Customer shall indicate its acceptance of the quote in writing. No oral agreement between persons involved in the project will be binding on either Halogen or Customer. Unless and until a proposed Change Request has been approved by the parties in writing, each party shall continue to perform its obligations under the Services Agreement as if the change had never been proposed.

5. PROFESSIONAL SERVICES EXPENSES

Halogen invoices expenses monthly, in arrears, as incurred. In connection with Professional Services performed at Customer's site, if any, Customer is responsible for actual travel and living expenses incurred by the Halogen trainer and/or consultant. These expenses will be invoiced by Halogen upon the completion of such on-site services, including without limitation, expenses relating to air and land transportation, hotel accommodation, and meal per diems and incidentals (maximum US\$80.00/diem local currency). If transportation and/or hotel accommodation are arranged by Customer on behalf of Halogen, such arrangements will be subject to Halogen's written pre-approval. All travel and living expenses billed by Halogen in accordance with its Travel & Expense Guidelines are due upon receipt of invoice.

If travel time is outside of the assigned Halogen training consultant's continent of residence, Customer shall also pay to Halogen a flat fee of US\$1,500/Halogen representative per on-site visit. Halogen recognizes the following continents: North America, South America, Europe (including British Isles), Asia, Africa, Australia and Antarctica. For clarity, travel to Hawaii, Alaska, Puerto Rico and/or Mexico from North America will require payment of the foregoing fee.

In connection with Professional Services performed at Customer's site, if any, Customer is generally responsible for the reimbursement of travel and living expenses incurred by Halogen due to flight cancellations or missed travel connections which are not caused by the actions of Halogen or its employees/agents.

Customer shall have the following alternatives with respect to teleconferencing: (i) if Customer is located within Global Crossing's North American tFN toll-free calling area Customer will have the option to use "GoToMeeting" (Web) and/or an tFN toll-free number; (ii) if Customer is International and located within Global Crossing's current tFN toll-free calling area Customer will have the option to use "GoToMeeting" (Web) and/or a tFN toll-free number, and (iii) if Customer is International and located outside of Global Crossing's current tFN toll-free calling area Customer will be asked to either call Halogen directly or provide their toll-free number for Halogen's use.

6. SCHEDULING & POSTPONEMENT/CANCELLATION

The stated project timelines referenced above are based upon delivery of the Professional Services in an uninterrupted manner over consecutive weeks per Software module. Customer acknowledges and agrees that requests by Customer to suspend the delivery of certain Professional Services may incur additional costs.

Specifically, training and consulting services must be booked and taken within the first twelve (12) months from the Effective Date as defined herein. Scheduling for training/consulting should be done as early as possible to assist in travel arrangements. If Customer postpones, cancels or fails to attend a

scheduled training or consulting engagement without a minimum of ten (10) Business Days prior written notice to Halogen. Customer shall pay to Halogen a total utilization fee equal to the lesser of (i) \$1,650 (local currency); and, (ii) the training/consulting engagement contract value. In addition, Customer shall pay to Halogen all unrecoverable fees and expenses associated with such cancellation, including without limitation, non-refundable travel costs. Such fees and expenses shall be invoiced by Halogen in a timely manner following Customer's cancellation.

All web-based training session(s) and related services will be delivered via the use of a combination of web collaboration software (for screen interaction) and telephone (for voice communication). Halogen expressly disclaims all warranties and representations regarding the quality of such web collaboration software and voice communication services, including without limitation that such services will be uninterrupted, timely, secure or error free. Customer specifically acknowledges and agrees that all training session(s) will take place at the mutually agreed upon time(s).

7. ASSUMPTIONS, CUSTOMER RESPONSIBILITIES AND ACKNOWLEDGMENTS

- Customer will provide a single point of contact with authority to work with Halogen.
- Customer is responsible for providing the required text for the Email Notification Center.
- Customer is responsible for performing a final quality check.
- Customer is responsible for utilizing Halogen's hot-line support as required for software support related issues. Customer is responsible for creation and maintenance of all additional content.
- Customer is responsible for all user center data, global settings within the options functionality, and extracting data for report generation with external tools.
- Customer will be required to complete, execute and return to Halogen a Configuration Sign-off Form prior to Customer's deployment of the Halogen TalentSpace™ application, failing which, Halogen disclaims all liability for system configuration issues, if any, which may be experienced by Customer.
- Customer is responsible for the provision of the employee data in the required import format and for validating the import of data in the Halogen TalentSpace™ User Center.
- Annual Metrics Review and Action Planning, and Process Optimization services will be performed on configuration of deliverables outlined in Section 1(a) of this Appendix D and cannot be transferred without following Halogen's standard Change Request process.
- Halogen reserves the right to add, delete or modify any training content provided pursuant to Section 1 of this Appendix D.
- Halogen will provide Professional Services to Customer in English only. Customer is responsible for providing an English speaking point of contact and for all translation requirements.
- Halogen will make all reasonable efforts to accommodate global time zones. To that effect, Halogen will provide Customer with access to staff resources identified in Section 1 of this Appendix D within standard working hours where the Halogen team member resides.
- Notwithstanding anything contained in this Appendix D, Customer acknowledges that in the event Customer requires or is entitled to 0.5 day or less of training or on-site consulting, Halogen will provide such training or consulting via the web, rather than via an on-site session. In the event that Customer requests an on-site session for 0.5 days or less of training or consulting, Customer shall be required to purchase an additional 0.5 day of additional services for a minimum total of 1.0 day of on-site services.
- **If Halogen Performance™ is licensed:**
 - Implementation of core Halogen Performance™ functionality such as linking to corporate goals, development planning and setting up talent profiles is included in this service package.
 - Customer is responsible for providing the development plan data in the required import format and for validating the final development plan content.
 - Customer is responsible for identifying the subjects of the appraisal process(es) and for validating the Halogen TalentSpace™ Participant Center.
 - Customer is responsible for defining and approving the process steps (workflow) required to support the appraisal process(es) as well as for monitoring processes.
 - Standard functionality will be used. Specifically, standard Halogen Performance™ competencies will be used in the form design. If required, Customer will receive sufficient guidance to implement their specific competencies.

• Customer will provide all appraisal forms to be created to Halogen in MS Word or MS Excel format.

• Customer understands that the forms available within the Halogen Performance™ application may not appear as exact duplicates of the Customer's original MS Word or Excel forms, and that minor variations in form appearance may be required in order to better leverage the capabilities of the Halogen Performance™ software.

• Form templates outlined in Section 1(a) of this Appendix D are to be used within the same process configured by Halogen. For example, if the Customer is deploying an annual appraisal process, up to two (2) form templates will be created to support the annual appraisal process (i.e. a manager and an employee form, or an exempt and non exempt form). Form(s) to support processes not configured by Halogen can be purchased under a separate Services Agreement. For example, if Customer is deploying an annual appraisal process with one (1) form template and chooses to also deploy a goal setting process then the goal setting form template would not be included.

• **If Halogen Succession™ is licensed:**

• Customer is responsible for supplying succession planning business rules and workflow, talent pools and related competencies.

• **If Halogen Compensation™ is licensed**

• Customer is responsible for supplying compensation business rules and workflow.

• **If Halogen Learning™ is licensed**

• Customer is responsible for supplying all learning content in the required import format and for validating the import of data.

• **If Halogen Learning™ is licensed without any other modules:**

• Customer is responsible for supplying all learning content in the required import format and for validating the import of data.

• Implementation of core Halogen Performance™ functionality such as linking to corporate goals, development planning and setting up talent profiles is included in this service package.

• Customer is responsible for providing the development plan data in the required import format and for validating the final development plan content.

• Standard functionality will be used. Specifically, standard Halogen competencies will be used in the development planning and Halogen Learning™ configuration. If required, Customer will receive sufficient guidance to implement their specific competencies.

• **If Halogen Job Description Builder™ is licensed.**

• Customer understands that the job descriptions available within the Halogen Job Description Builder™ application may not appear as exact duplicates of the Customer's original MS Word or Excel forms, and that minor variations in form appearance may be required in order to better leverage the capabilities of the Halogen Job Description Builder™ software.

• **If Halogen Job Description Builder™ is licensed without any other modules:**

• Customer understands that the job descriptions available within the Halogen Job Description Builder™ application may not appear as exact duplicates of the Customer's original MS Word or Excel forms, and that minor variations in form appearance may be required in order to better leverage the capabilities of the Halogen Job Description Builder™ software.

• Implementation of core Halogen Performance™ functionality such as linking to corporate goals, development planning and setting up talent profiles is included in this service package.

• Creating and managing competency libraries is included in this service package.

• **If Halogen Talent Acquisition™ is licensed:**

• Customer is responsible for all data entry required to enter pre-existing job requisitions and candidate information. Customer can contract Halogen to perform these services pursuant to a separate Services Agreement.

• Additionally, Customer acknowledges and agrees that

o delays by Customer in providing information and decisions to Halogen may negatively impact the dates, prices and scheduling commitments expressed in this Agreement.

o the following deliverables are not included in this Agreement but Halogen would be pleased to provide a separate quotation for such services.

- If Halogen Performance™ is licensed, data entry of corporate goals/departmental goals
- If Halogen Performance™ is licensed, custom content helper
- If Halogen Learning™ is licensed, import of historical course data
- Deployment of a multi-lingual environment

- Significant changes to the Halogen UI property file

8. TERMINATION OF ANNUAL PROFESSIONAL SERVICES

Following the initial subscription term (as identified in Section 1 on Page 1 of this Agreement), if, in accordance with Section 7 of Schedule A, Customer renews the Agreement for successive one year terms, Customer shall either (i) elect not to renew the Annual Professional Services at the end of such initial subscription term, or any renewal term, by providing Halogen with at least thirty (30) days prior written notice of its intention to terminate; or (ii) renew the Annual Professional Services in accordance with such Section.

ADDENDUM
to the Subscription Software License and Services Agreement
(# 11-2014-1610) ("Agreement")
between
Halogen Software Inc. ("Halogen")
and
Adams County, Colorado ("Customer")

WHEREAS Halogen and Customer wish to amend the terms and conditions contained within the Agreement as set forth below ("Addendum");

NOW THEREFORE in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The effective date of this Addendum shall be the date it has been signed by both parties.
2. Subject to the terms and conditions contained within this Addendum, the terms and conditions of the Agreement shall continue in full force and effect. Where reference is made in this Addendum to a schedule or section number, it shall refer to a schedule or section number in the Agreement, unless otherwise stated. Unless otherwise defined in this Addendum, all capitalized words utilized in this Addendum shall have the same meaning as defined in the Agreement.
3. The parties agree to amend the Agreement as follows:

Schedule A (General Terms and Conditions)

- (a) **Section 7(a) (Term) is hereby replaced with:** The Agreement shall be effective on the Effective Date and shall, unless earlier terminated as provided herein, continue for the duration of the license term specified in Section 1 on Page 1 of this Agreement. Upon expiration of such license term, the Agreement shall not automatically renew absent Customer's prior written permission.
- (b) **Section 7(b)(i) (Termination) is hereby replaced with:** termination of the initial subscription term, where notice of intention to renew has not been provided by Customer to Halogen in accordance with Section 7(a) above;
- (c) **The following is hereby added to Section 7(b) (Termination):** Halogen acknowledges and agrees that ability of the Customer to fulfill its commitment to Halogen is dependent upon the appropriation and allotment of funds by Adams County Board of County Commissioners to the Customer. In the event that Adams County Board of County Commissioners fails to appropriate or allot the necessary funds to the Customer, and, as such, the Customer is unable to fulfill its future payment obligations to Halogen, the Customer may terminate the Agreement.
- (d) **The third sentence of Section 9(a) (Confidentiality) is hereby modified to read:** Halogen Confidential Information shall be deemed to include, regardless of marking, the Software, the Documentation, and any unannounced product(s) or service(s) of Halogen.
- (e) **Two new sentences have been added to the end of Section 9(c) (Exclusions):** The parties understand that Customer is a governmental entity pursuant to the Colorado Open Records Act ("CORA"). In the event of a conflict between the terms of this Agreement and the provisions of CORA, the terms of CORA shall prevail.
- (f) **Section 14 (Dispute Resolution) is hereby modified to read:** EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO

ENTER INTO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.


(g) The last sentence of Section 16 (Audit) is hereby intentionally deleted.

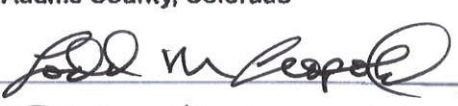
(h) Section 17 (Publication) is hereby modified to read: Customer consents to publication of its name by Halogen in a factual listing of Halogen's customers within presentations, on trade show signs and on its website. Halogen shall seek Customer's prior written authorization for any other use of Customer's name. Provided that Customer, in its sole discretion, is satisfied with the Software Customer agrees to consider: (i) participating in a success story for the Software to be published on Halogen's website and (ii) acting as a client reference for Halogen on an as- and when-needed basis.

(i) Section 18(b) (Governing Law and Jurisdiction) is hereby modified to read: This Agreement is governed by and is to be construed and interpreted in accordance with the laws of the State of Colorado, without regard to conflict of laws. The parties expressly disclaim the application of the United Nations Convention on the International Sale of Goods to this Agreement. Subject to Section 14 above, the parties submit to the exclusive jurisdiction of the courts of the State of Colorado.

4. This Addendum shall be interpreted as part of and in the manner set out in the Agreement. This Addendum shall supersede all previous representations and discussions, either oral or written, relating to its subject matter, and may not be modified except by a written document signed by both parties.

IN WITNESS WHEREOF the parties hereto have executed this Addendum.

Halogen Software Inc.
Signature: 
Name: Eric J. Graham
Title: Vice President, Finance
Date: Dec. 23, 2014

Adams County, Colorado
Signature: 
Name: Todd M Leopold
Title: County Manager
Date: Dec. 24, 2014

ATTEST:

Karen Long
Clerk and Recorder



APPROVED AS TO FORM:

Adams County Attorney's Office

By: 
Attorney Signature

HALOGEN[™] SOFTWARE

Strategic Talent Management

RFP 2014.158
Contract No. 12-2014-1793

ADDENDUM #1

to the Software License and Services Agreement
(#11-2014-1610) ("Agreement")
between
Halogen Software Inc. ("Halogen")
and
Adams County, Colorado ("Customer")

WHEREAS Halogen and Customer wish to amend the terms and conditions contained within the Agreement as set forth below ("Addendum");

NOW THEREFORE in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

1. The effective date of this Addendum shall be the date it has been signed by both parties.
2. Subject to the terms and conditions contained within this Addendum, the terms and conditions of the Agreement shall continue in full force and effect. Where reference is made in this Addendum to a schedule or section number, it shall refer to a schedule or section number in the Agreement, unless otherwise stated. Unless otherwise defined in this Addendum, all capitalized words utilized in this Addendum shall have the same meaning as defined in the Agreement.
3. The parties agree to amend the Agreement as follows to provide for a Temporary Hosted Site license and related services:

a) Description of Temporary Hosted Site

In a timely manner following the effective date of this Addendum, Halogen shall install a copy of Halogen Performance[™] Public Sector, Halogen 360 Multirater[™], Halogen Compensation[™], Halogen Learning[™] (includes SCORM), Single Sign-on (SSO) Connectivity and Halogen[®] HRIS Connect[™] modules (the "Evaluation Software") on its server (the "Temporary Hosted Site") for evaluation by Customer. Halogen shall host the Evaluation Software on its server for a period of ~~twenty-four (24)~~ twenty-four (24) months commencing on December 31, 2014 (the "Temporary Hosting Period"). During the Temporary Hosting Period, in support of such evaluation, Halogen grants to Customer a non-exclusive, royalty-free, non-transferable, non-assignable right to access and use the Evaluation Software via a web browser, provided that (1) Customer is solely responsible for designing and developing the evaluation criteria framework applicable to the Evaluation Software; (2) Customer provides, at its expense, all telecommunications, computer, hardware and software equipment and services (collectively, the "Equipment") necessary for Customer to access the Temporary Hosted Site and evaluate the Evaluation Software; and, (3) the Equipment complies with the minimum system requirements determined and communicated by Halogen from time to time.

Customer acknowledges that this Temporary Hosted Site will be created by Halogen:

- i. as a new installation using a copy of Customer's current production database and configuration
- ii. using the version of the Evaluation Software that is currently installed on Customer's production site.

Customer further acknowledges and agrees that

- i. Customer will require a separate license file for its Halogen[®] HRIS Connect[™] instance and that it is responsible for contacting Halogen Support to receive this file.
- ii. Customer may contact Halogen Support for assistance in the configuration of Halogen[®] HRIS Connect[™].
- iii. Upon termination of this Addendum, Customer will remove the applicable code for the Halogen[®] HRIS Connect[™] utility from all hardware under its control, and provide Halogen with written confirmation that it has done so.
- iv. During the term of this Addendum, Customer may request one (1) "refresh" of the Temporary Hosted Site from its then-current hosted database, at no additional charge.

b) Term and Termination

Unless earlier terminated in accordance with the Agreement, this Addendum shall continue for the initial Temporary Hosting Period. Following the initial Temporary Hosting Period, the provisions of this Addendum shall not renew at Halogen's then current temporary test site hosting rates absent Customer's prior written permission. Unless earlier terminated in accordance with the

Agreement, this Addendum shall terminate upon termination of the Temporary Hosting Period. Upon such termination, Halogen shall terminate Customer's access to the Temporary Hosted Site.

c) Fees

Customer agrees to pay Halogen US\$ 4,800.00 (plus applicable taxes) for the above-described license and services (the "Fee") ~~less a one-time discount of 100% for a net amount payable of US\$ 0.00~~. Fees associated with Temporary Hosting Period renewal(s), if any, are due and payable within thirty (30) days of Customer's receipt of Halogen's invoice. Halogen reserves the right to suspend Customer's access to the Temporary Hosted Site upon prior written notice given in accordance with the Agreement if undisputed amounts are unpaid when due and remain unpaid at the end of the applicable notice period.

d) Restrictions on Use

Customer acknowledges and agrees that: (1) the Evaluation Software is owned by Halogen and Halogen retains all right, title and interest in and to the Evaluation Software; (2) except for the limited right to use and test the Evaluation Software as expressly provided herein, Customer acquires no right or interest in the Evaluation Software; (3) use of the Evaluation Software by Customer shall, except as specifically authorized herein to the contrary, be subject to and in accordance with Customer's Grant of License in the Agreement.

Customer further expressly acknowledges and agrees that its use of the Evaluation Software may be monitored by Halogen and is limited to:

- i. Storage not to exceed 1GB; and
- ii. Daily data transfer not to exceed 500MB

Halogen reserves the right to impose an annual surcharge of US\$2500 per GB in respect of storage and/or US\$10 per MB in respect of data transfer if Customer's overage as assessed by Halogen extends beyond seven (7) calendar days from Halogen's notification to Customer of any such overage.

e) Acknowledgements

Notwithstanding anything to the contrary in the Agreement, Customer acknowledges the following:

- i. Halogen will not provide any back-up services with respect to Customer's data or other information stored on the Temporary Hosted Site's database and/or Halogen's servers in connection with this Addendum, either during and/or following expiration of the Temporary Hosting Period.
- ii. Halogen disclaims any and all responsibility for any transfer of data between the Temporary Hosted Site and Customer's production (i.e. live) database.
- iii. Upgrades to Customer's production (i.e. live) database will not be reflected in the Temporary Hosted Site, provided however that in the event that:
 - a. Customer licenses one or more additional products from Halogen, Halogen shall (upon receipt of written request from Customer) apply a new license file to the Temporary Hosted Site reflecting such additional product(s); or
 - b. Customer ceases to license one or more products from Halogen, Halogen shall apply a new license file to the Temporary Hosted Site reflecting the removal of such product(s).
- iv. The email notification function will not be available to the Customer during the Temporary Hosting Period in respect of the Evaluation Software.
- v. If SSO is licensed:
 - a. Customer's SSO configuration will continue to function in the Temporary Hosted Site.
 - b. If the Evaluation Software includes a version of SSO leveraging SAML 2.0 to authenticate users, for Customers who are members of InCommon, Halogen agrees to configure SAML 2.0 initially but cannot guarantee that the metadata will be refreshed daily or at all for the Temporary Hosting Period.
- vi. Unless otherwise stated in this Addendum, if licensed, Customer's Halogen® HRIS Connect™ configuration will not function with the Temporary Hosted Site.
- vii. Provided that Customer is current on its M&S payments to Halogen, Customer is eligible to receive telephone and email support from Halogen on the Temporary Hosted Site during the Temporary Hosting Period through its designated administrator contacts. Customer acknowledges and agrees that certain Updates to the Evaluation Software may be provided without notification, including, without limitation, high priority and necessary fixes and features, security patches and performance patches. However, unless specifically agreed by the parties in writing, Halogen has no obligation to provide Customer with hard copy documentation, upgrades, enhancements, modifications or other additional support in relation to the Evaluation Software.
- viii. Customer will receive a separate URL and license key to access the Temporary Hosted Site.
- ix. Notwithstanding anything to the contrary in the Agreement, Customer has no entitlement to service availability credits in respect of the Temporary Hosted Site.

4. Disclaimer of Warranties and Limitation of Liability


CUSTOMER ACKNOWLEDGES AND AGREES THAT HALOGEN'S INSTALLATION AND HOSTING OF THE EVALUATION SOFTWARE IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING BY LAW, STATUTE, USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE. HALOGEN DOES NOT REPRESENT OR WARRANT THAT (i) THE EVALUATION SOFTWARE WILL MEET CUSTOMER'S BUSINESS REQUIREMENTS, OR (ii) THE OPERATION OF THE EVALUATION SOFTWARE WILL BE VIRUS-FREE, ERROR-FREE OR UNINTERRUPTED. CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE EVALUATION SOFTWARE AND RELEASES HALOGEN FROM ALL LIABILITIES ARISING THEREFROM.

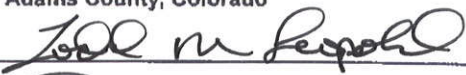
IN NO EVENT, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT OR OTHERWISE, SHALL HALOGEN, ITS LICENSORS, OR ITS AFFILIATES, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR CONTRACTORS BE LIABLE TO CUSTOMER FOR: (i) ANY INDIRECT, INCIDENTAL, ORDINARY, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES INCLUDING WITHOUT LIMITATION ECONOMIC LOSS, LOST PROFITS, LOSS OF USE, LOSS OF USE OF PROFITS, REPROCUREMENT COSTS OR LOST OR DAMAGED DATA, EVEN IF HALOGEN OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE, OR IF SUCH DAMAGES ARISE FROM ANY MISREPRESENTATION, BREACH OF ANY IMPLIED OR EXPRESS WARRANTY OR CONDITION, BREACH OF ANY OTHER TERM (INCLUDING A FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM) OR BREACH OF STATUTORY DUTY; OR (ii) A MAXIMUM AGGREGATE LIABILITY IN ANY CLAIM, ACTION, DEMAND OR PROCEEDING WHICH EXCEEDS THE TOTAL AMOUNT OF FEES ACTUALLY PAID TO HALOGEN BY CUSTOMER IN RESPECT OF THE TEMPORARY HOSTED SITE DURING THE YEAR OF THE TEMPORARY HOSTING PERIOD IN WHICH THE CLAIM AROSE. SOME STATES/COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES SO THE ABOVE LIMITATION MAY NOT APPLY.

5. Confidentiality. The Evaluation Software contains confidential and proprietary information and trade secrets of Halogen and/or its licensors (the "Confidential Information"). Customer shall not copy or distribute, disclose, or disseminate the Confidential Information in any way or form to anyone except its own employees and professional advisors who have a reasonable need to know such Confidential Information and who are obligated to maintain the confidentiality of such Confidential Information pursuant to a written agreement of confidentiality and non-disclosure with the Customer. Customer shall treat the Confidential Information with the same degree of care to avoid disclosure to any third party as is used with respect to the Customer's own information of like importance which is to be kept secret, and in any event no less than reasonable care. Halogen acknowledges and agrees that Customer's data stored on the Temporary Hosted Site database and any electronic records and reports containing such data that may be stored on Halogen's servers are Confidential Information as defined in the Agreement and may, depending on their nature, include Personal Information as defined in the Agreement. Notwithstanding Halogen's obligations pursuant to the Agreement, Customer acknowledges that Halogen is under no obligation to maintain the Temporary Hosted Site or to preserve the data or electronic records or reports contained therein following expiration of the Temporary Hosting Period.
6. This Addendum shall be interpreted as part of and in the manner set out in the Agreement. This Addendum shall supersede all previous representations and discussions, either oral or written, relating to its subject matter, and may not be modified except by a written document signed by both parties.

7. This Addendum is open for acceptance by Customer for a period of thirty (30) days from Customer's first receipt. Please return a complete, executed copy of this Addendum by fax to 775-640-9544 or by email to contracts@halogensoftware.com. If applicable, please forward your PO number or document to our Finance Department by fax (613-482-5083) or email (ar@halogensoftware.com) to ensure proper reference on Halogen's Invoice.

IN WITNESS WHEREOF, both parties have caused this Addendum to be executed by their authorized representatives.

Halogen Software Inc.
Signature: 
Name: Eric J. Graham
Title: Vice President, Finance
Date: Dec. 23, 2014

Adams County, Colorado
Signature: 
Name: Todd M Leopold
Title: County Manager
Date: Dec. 24, 2014
Email: tleopold@adco.gov.org

ATTEST:

Karen Long
Clerk and Recorder



APPROVED AS TO FORM:

Adams County Attorney's Office

By: 
Attorney Signature