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1.3. Data Collection: Licensee acknowledges that Application collects health and performance metrics for Licensee’s data center systems for the sole purpose of Licensee to evaluate Application.

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4. TERMINATION.

4.1. Termination. The Term of this Evaluation EULA is specified in Section 1.2.

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4.3. To the extent not specifically described in the Evaluation EULA, the terms and conditions of the Evaluation EULA that by their sense and context are intended to survive the expiration or termination of the Evaluation EULA will survive.

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7. GENERAL. All notices shall be given in writing, and shall be deemed to have been duly given when delivered electronically, by hand, posted by registered first class mail (airmail if international) or sent via recognized overnight couriers (e.g., Federal Express) to the party to which such notice is required to be given at the business address stated in below or to such other address as such party may have specified to the other in writing. Notices shall be deemed received on the earlier of the following: (a) notices delivered electronically shall be deemed received immediately; (b) notices delivered by hand shall be deemed received the first business day following such delivery or sending; and (c) notices which have been posted or sent via overnight courier shall be deemed received on the second business day following posting. Either party may change its address by giving notice of the new address to the other party. FixStream and Licensee are independent contractors and will so represent themselves in all regards. Licensee may not bind FixStream in any way. Nothing in this Evaluation EULA will be construed to make either party the agent or legal representative of the other or to make the parties partners or joint venturers. In the performance of this Evaluation EULA, each party shall comply with the requirements of all applicable laws, ordinances, and regulations of the United States or any state, country, or other governmental entity. Each party shall comply with all export laws and regulations. Licensee will not export or re-export directly or indirectly (including via remote access) any part of the Application, or any Confidential Information, to any country for which a validated license is required under any export laws without first obtaining a validated license and complying with this Evaluation EULA. Licensee may not assign this Evaluation EULA, whether by operation of law or otherwise, without the prior written consent of FixStream, which consent will not be unreasonably withheld. Any purported assignment in contravention of this section is null and void. A transfer of a controlling interest in the equity of a party shall be deemed an assignment for purposes of this subsection. Subject to the foregoing, this Evaluation EULA will bind and inure to the benefit of any successors or assigns. This Evaluation EULA shall be governed by and construed in accordance with the laws of the State of California, but without giving any effect to the choice of law principles thereunder. The parties agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Evaluation EULA. The Application and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Application and accompanying Documentation by the U.S. Government shall be governed solely by the terms of this Evaluation EULA and shall be prohibited except to the extent expressly permitted by the terms of this Evaluation EULA. If any provision of this Evaluation EULA will be held invalid or unenforceable by a court, the remaining provisions of this Evaluation EULA will remain in full force and effect, and the provision or portion thereof affected will be construed so as to be enforceable to the maximum extent permissible by law. All waivers of rights or obligations under this Evaluation EULA must be in writing. This Evaluation EULA may be executed in counterparts, each of which so executed

shall be deemed to be an original and such counterparts together shall constitute one and the same agreement. This Evaluation EULA is the complete and exclusive statement of the understandings of the parties, and it supersedes and merges all prior proposals and understandings, whether oral or written, relating to the subject matter of this Evaluation EULA. In the event of a conflict between the terms and conditions of this Evaluation EULA and a Schedule, the Schedule shall be controlling with respect to those transactions covered by that Schedule. This Evaluation EULA may not be modified except in writing, signed by a duly authorized representative of FixStream and a duly authorized representative of Licensee, and expressly referring to this Evaluation EULA.

8. CONTACT/ADDRESS

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