

## SOFTWARE END USER LICENSE AGREEMENT

**SQL SENTRY, LLC, d/b/a SENTRYONE, and  
PRAGMATIC WORKS SOFTWARE, INC., a wholly owned subsidiary of SQL SENTRY, LLC**

4001-B Yancey Road  
Charlotte, North Carolina 28217  
Ph: (704) 895-6241  
Fax: (704) 895-8771

BY PROCEEDING TO DOWNLOAD, INSTALL OR USE THE SOFTWARE IN WHICH THIS AGREEMENT IS ELECTRONICALLY EMBEDDED OR BY OBTAINING A LICENSE KEY FOR THIS SOFTWARE, YOU HEREBY ACKNOWLEDGE AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT INSTALL OR USE THE SOFTWARE AND DELETE THE SOFTWARE FROM YOUR COMPUTER SYSTEM. BY INSTALLING OR USING THE SOFTWARE OR BY CLICKING ON "ACCEPT" YOU ACKNOWLEDGE AND AGREE THAT ON BEHALF OF YOURSELF AND YOUR EMPLOYER YOU HAVE READ THIS SOFTWARE END USER LICENSE AGREEMENT CAREFULLY, THAT YOU AND YOUR EMPLOYER AGREE TO BE BOUND BY THIS AGREEMENT AND THAT IF APPLICABLE YOUR EMPLOYER HAS INFORMED YOU OF THE RELEVANT PROVISIONS OF THIS AGREEMENT WHICH MAY BE APPLICABLE TO YOU. THIS AGREEMENT, SHALL GOVERN YOUR INSTALLATION AND USE OF THE SOFTWARE IN WHICH THIS AGREEMENT IS ELECTRONICALLY EMBEDDED. LICENSOR URGES YOU TO CAREFULLY READ THIS AGREEMENT AND ASSESS YOUR USE OF THE SOFTWARE PRIOR TO INSTALLING OR USING THE SOFTWARE OR MAKING ANY DECISION TO USE OR PURCHASE IT.

THIS SOFTWARE END USER LICENSE AGREEMENT (the "Agreement") is dated as of the date of Licensee's respective purchase agreement ("Purchase Agreement"), pursuant to which Licensee purchased its respective license(s) to the Licensed Product, or in the event of a demo or trial use of the Licensed Software, the date on which you accept this Agreement (the "Effective Date"), by and between SQL Sentry, LLC, d/b/a SentryOne, a Delaware limited liability company, and Pragmatic Works Software, Inc., a wholly owned subsidiary of SQL Sentry, LLC, each with offices located at 4001-B Yancey Road, Charlotte, North Carolina 28217 (SQL Sentry, LLC, d/b/a SentryOne and Pragmatic Works Software, Inc. are collectively referred to herein as "Licensor"), and the customer set forth on the Purchase Agreement pursuant to which such license to use the Licensed Product is purchased ("Licensee"), and sets forth the terms and conditions whereby Licensor agrees to provide to Licensee and Licensee agrees to acquire from Licensor one or more licenses to use certain software and documentation and, where applicable, maintenance services related thereto, owned or licensed by Licensor or a subsidiary of Licensor, as set forth on the Purchase Agreement delivered in connection with this Agreement. To the extent any terms or conditions contained in the Purchase Agreement conflict with the terms or conditions contained in this Agreement, the terms and conditions of the Purchase Agreement shall supersede only those conflicting terms or conditions contained in this Agreement and only to the minimum extent necessary to harmonize the terms in such Purchase Agreement with the terms contained herein. This Agreement specifically supersedes and replaces the terms and conditions of all prior agreements between Licensor and Licensee relating to the software licensed hereunder, including, but not limited to, any agreements which may accompany or are embedded in Licensor's products or which have been previously in force between the parties.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the mutual promises set forth herein, Licensor and Licensee agree as follows:

### **1. DEFINITIONS.**

Whenever used in this Agreement, the capitalized terms quoted below will have the meaning ascribed to them in this Section.

1.1 "Acceptance" means the date Licensee accepts the Licensed Product.

1.2 "Confidential Information" has the meaning set forth in Section 12 of this Agreement.

1.3 "Copy" or "Copies" means the Licensed Product (including the components thereof), any Releases, Error Correction, or Enhancement pertaining thereto, and any reproductions of the Licensed Product or any Release, Error Correction, or Enhancement pertaining thereto.

1.4 "Delivery Date" means the date of Licensee's receipt of the Original Licensed Product.

1.5 "Enhancement" means a modification of the Licensed Software by Licensor which provides (a) a capability not defined in the Product Specifications or (b) an improvement in the efficiency of the Licensed Software. Licensor may designate an Enhancement as "Major" or "Minor" depending on (a) Licensor's reasonable assessment of the Enhancement's value and (b) whether the Enhancement adds a functional extension to the preexisting Licensed Software. An Enhancement may entail a modification to the Product Specifications and/or the Object Code or may be provided to Licensee in the form of an Upgrade.

1.6 "Error" means a failure of the Licensed Software to conform in all material respects to the Product Specifications. Provided, however, any non-conformity resulting from Licensee's improper use of the Licensed Software, combining or merging the Licensed Software with software not approved by Licensor for use with the Licensed Software, or modification of the Licensed Software which has not been performed by Licensor, shall not be considered an Error.

1.7 "Error Correction" means a modification of the Licensed Software by Licensor which corrects Errors discovered in the Licensed Software and enables the Licensed Software to substantially conform to the Product Specifications.

1.8 "Intellectual Property Rights" means all proprietary information, patents, patent applications, trademarks, trade names, service marks, certification marks, collective marks, designs, processes, inventions, licenses, copyrights, know-how and trade secrets relating to the origin, design, manufacture, programming, operations, function, configuration, or service of the Licensed Product.

1.9 "License Fees" means those amounts specified and set forth in Licensee's respective Purchase Agreement.

1.10 "License Key" means a special security code owned and controlled by Licensor which may be required to render operational certain Licensed Products. Where necessary for operation of the Licensed Products, Licensor will provide a License Key to Licensee.

1.11 "Licensed Documentation" means all written materials, binders, user manuals, and other documentation and materials supplied by Licensor and related to the Licensed Software, other than the Licensed Software.

1.12 "Licensed Product" means collectively the Licensed Software and Licensed Documentation.

1.13 "Licensed Software" or "Software" means the machine-readable object code version of the software that Licensor or its authorized representative makes available to the Licensee, whether in a free or purchased versions, and whether embedded on disc, tape or other media, as further identified in Licensee's respective Purchase Agreement, all Error Corrections, Enhancements, and Releases thereof supplied by Licensor, and all permitted copies of the foregoing.

1.14 "Major Enhancement" means a version of the Licensed Software which contains new features or substantially improved functions from those contained in the Original.

1.15 "Object Code" means machine readable computer programs.

1.16 "Operators" means the employees, or agents of Licensee who are bound by the confidentiality provisions of Section 12 of this Agreement and who are permitted access to or use of the Licensed Product.

1.17 "Original" means the first edition of the Licensed Product delivered by Licensor to Licensee pursuant to this Agreement.

1.18 "Perpetual License" means that type of software license set forth in Section 2.1.1.

1.19 "Product Specifications" means the technical and performance functions of the Licensed Software, as specifically set forth in the Product Specifications section of the Licensed Documentation.

1.20 "Release" or "Releases" means the edition(s) of the Licensed Software subsequent to the Original Licensed Product. A Release may include Licensed Documentation provided by Licensor for Error Correction or Enhancement.

1.21 "Service Fees" means those amounts specified in Licensee's respective Purchase Agreement.

1.22. "Software Maintenance" means the Error Correction support provided by Licensor.

1.23 "Software Maintenance Fees" means those amounts specified in Licensee's respective Purchase Agreement.

1.24 "Software Maintenance Program" means the procedure for ongoing software maintenance set forth in Section 6 of this Agreement.

1.25 "Software Maintenance Term" means the term of Licensee's subscription to the Software Maintenance Program, as determined by Licensee's respective Purchase Agreement.

1.26 "Source Code" means the plain text, readable computer programming code, associated procedural code, and supporting documentation for the Original Licensed Software and any Releases, Error Corrections, or Enhancements pertaining thereto.

1.27 "Term" means the term of this Agreement, as stated in the Licensee's respective Purchase Agreement, and as further determined by Licensee's selection of a Term License or a Perpetual License, as further set forth in Sections 2.1.1 and 2.1.2.

1.28 "Term License" means that type of software license set forth in Section 2.1.2.

1.29 "Third Party Software" means software and related materials that are furnished by a third party and subject to a separate license agreement between the licensor of that software and the Licensee.

1.30 "Warranty Period" means that period set forth in Section 9.1 of this Agreement.

1.31 "Upgrade" means software which is marketed by Licensor as a separate software product and which is subject to a separate license fee. An Upgrade may include Major Enhancements.

## **2. GRANT OF LICENSE.**

2.1.1 Perpetual License Grant. Licensor grants to Licensee and Licensee accepts a limited, perpetual, revocable, non-exclusive, non-sublicensable, non-assignable, non-transferable, non-resellable license, to the extent applicable, and as specified in Licensee's respective Purchase Agreement to install, execute, and use the Licensed Product, in the manner described in this Agreement. Licensor reserves all rights in the Licensed Product. As it pertains to Perpetual Licenses, this Agreement shall be effective as of the Effective Date and continue in perpetuity, unless sooner terminated per the terms of this Agreement or the Licensee's respective Purchase Agreement.

2.1.2 Term License Grant. Licensor grants to Licensee and Licensee accepts a limited, term, revocable, non-exclusive, non-sublicensable, non-assignable, non-transferable, non-resellable license, to the extent applicable, and as specified in Licensee's respective Purchase Agreement to install, execute, and use the Licensed Product, in the manner described in this Agreement. Licensor reserves all rights in the Licensed Product. As it pertains to Term Licenses, this Agreement shall be effective as of the Effective Date, as defined by the Purchase Agreement, and shall remain in effect for a period of one (1) year from the Effective Date, and thereafter automatically renew for an additional one (1) year period on each anniversary of the Effective Date, unless and until either Party provides the other Party with sixty (60) days prior written notice of its desire not to renew the Term, or unless sooner terminated per the terms of this Agreement or the Licensee's respective Purchase Agreement.

2.1.3 Licensee must use the Licensed Product (a) only in a manner and for the purposes for which the Licensed Product was designed and (b) only for Licensee's sole and exclusive benefit. Licensee shall not copy any part of a Licensed Product, except as specifically set forth in Section 8 of this Agreement. If requested by Licensor, Licensee shall provide Licensor a written description of the procedures under which it makes backup copies of the Licensed Software, and Licensor shall promptly approve or disapprove those procedures, which approval shall be at Licensor's sole discretion.

All uses not permitted under this Section 2.1 are prohibited. By way of example and without limitation, Licensee may not: (a) disassemble, decompile, reverse engineer, or modify the Licensed Software; (b) examine the Licensed Software with debugging, memory inspection, or disk inspection tools; (c) rent or sublicense the Licensed Product; (d) permit use of the License Product by a person who is not an Operator; (e) transmit an electronic copy of the Licensed Software by any means; (f) use the Licensed Software in the operation of a service bureau or time sharing arrangement or to provide outsourcing services; (g) reverse engineer or otherwise attempt to acquire, bypass or disable the License Key; or (h) copy, reproduce, re-manufacture or in any way duplicate all or any part of the Licensed Products or related intellectual property WHETHER MODIFIED OR TRANSLATED INTO ANOTHER LANGUAGE OR NOT, or in any documentation, or in any other material provided by Licensor in association with the Licensed Products, except as specified herein and in accordance with the terms and conditions of this Agreement. Licensee agrees that the performance of any of the above, or Licensee's failure to reasonably protect the Licensed Products will actually and materially damage Licensor.

Nothing in this Agreement will entitle Licensee to receive Source Code of the Software or Releases, in whole or in part. Licensor, in its sole discretion, reserves the right to add additional features or functions, or to provide Error Corrections, Enhancements, or Releases. Licensee acknowledges and agrees that Licensor has no obligation to make available to Licensee any Releases of the Licensed Products, except during an active Term License or where Licensee receives Software Maintenance services from Licensor as governed by Section 6 of this Agreement.

2.1.4 Cloud Services. The Parties acknowledge and agree that as a convenience to Licensee, and in connection with the use of the Licensed Products, that Licensee shall be permitted, at Licensee's sole determination, to use Licensor's cloud storage to store information and/or to upload queries, notifications, reports, or similar data or Confidential Information. Licensee hereby acknowledges that the use of Licensor's cloud services is not a part of the Licensed Product, nor Licensee's right under the terms of this Agreement, but rather a convenience offered to Licensee, which Licensee may freely elect not to use. Licensee further acknowledges that there is inherent risk associated with the use of Licensor's cloud services, including but in no way limited to hacking, breach of the cloud, and/or unauthorized disbursement of Licensee's data or Confidential Information. In the event that Licensee would

prefer not to utilize Licensor's cloud services, Licensee shall be permitted to request that Licensor disconnect Licensee's Licensed Product from the cloud services. Should Licensee elect to use the cloud service, then Licensee acknowledges that it does so at its own risk, and further agrees to hold harmless Licensor from any resulting harm to Licensee or its Operators, third party customers or affiliates.

2.2 Ownership. Licensor owns the media on which the Licensed Software is originally or subsequently recorded; provided, however, subject to the terms and conditions of this Agreement, Licensee may store and use the Licensed Software in electronic form for use solely by Licensee and Licensee's Operators. As between Licensor and Licensee, Licensor retains all title to the Licensed Software (both as recorded on the original media and on any subsequent media), and all computer recorded data related thereto, the Licensed Documentation, and any Copies in any form. This Agreement is a license to use, and not a contract of sale for, the Licensed Product. All Intellectual Property Rights in and to the Licensed Product are retained by Licensor or the licensor of Third Party Software, as the case may be. Licensee shall not use either the name of Licensor, the licensor of Third Party Software, or the name of the Licensed Product or Third Party Software licensed under this Agreement for any commercial purpose or in any advertising, promotional or public statement without the prior, written consent of Licensor or the licensor of Third Party Software, which consent shall be at Licensor's or the licensor of Third Party Software's sole discretion. Licensee also agrees that all techniques, algorithms, and processes contained in or on the Licensed Products or any modification or extraction thereof constitute Licensor trade secrets and will be safeguarded by Licensee. Licensee agrees not to remove, deface, or destroy any copyright, patent notice, trademark, service mark, other proprietary markings, or confidential legends placed on or within the Licensed Software, the Licensed Documentation, and any Copies thereof in any form. Licensee further acknowledges and agrees that the licenses granted hereunder and the restrictions applicable to Licensee's installation and use of the License Software will vary according to the type of Licensed Software purchased by Licensee and the type of license purchased by Licensee. One or more of the restrictions set forth in this Section 2.2 may apply to the Licensed Software depending upon the type of licensed purchased and the terms contained in Licensee's respective Purchase Agreement relating to the Licensed Software. Licensee acknowledges that the list of available license types may be amended from time to time in Licensor's sole discretion. Licensee hereby agrees to install, operate and use the Licensed Software in accordance with the following license restrictions and conditions as further set forth in Licensee's respective Purchase Agreements:

- (a) Prior to purchasing the Licensed Software, Licensee may install, operate and use the Licensed Software on a demo or trial basis for a period defined in the Licensee's trial commencing on the Effective Date;
- (b) For Licensed Software licensed on a "per instance" basis, Licensee's use shall be limited to the installation and use on one instance per license;
- (c) For Licensed Software licensed on a "per server" basis, Licensee's use shall be limited to the installation and use on one server per license;
- (d) For Licensed Software licensed on a "per user" or "per seat" basis, Licensee's use shall be limited to access by one user or seat per license;
- (e) For Licensed Software licensed on a "per monitored device" basis, Licensee's use shall be limited to the installation and use on one device per license;
- (f) For Licensed Software licensed on a "per user / device" basis, Licensee's use shall be limited to the installation and use for a single user on a single device per license;
- (g) For Licensed Software licensed on a "per site" basis, Licensee's use shall be limited to the installation and use by one location, as further specified in Licensee's respective Purchase Agreement by address;
- (h) For Licensed Software licensed on a "per enterprise" basis, Licensee's use shall be limited to the installation and use by one enterprise or company, as further specified in Licensee's respective Purchase Agreement;

### **3. DELIVERY AND INSTALLATION.**

3.1. Delivery of Software. Licensor shall deliver the Licensed Product to Licensee through Licensor's chosen delivery method, as amended from time to time in Licensor's sole discretion, on the Delivery Date.

3.2. Installation Services. Licensor shall install, or provide Licensee with the assistance and instructions necessary for the successful installation of the Software.

### **4. PAYMENT TERMS.**

4.1 License Fees. As compensation for the license provided in this Agreement for the Licensed Product, Licensee shall pay Licensor the License Fees as set forth in Licensee's respective Purchase Agreement.

4.2 Service Fees. As compensation for the services provided by Licensor under this Agreement, Licensee shall pay Licensor the Service Fees as set forth in Licensee's respective Purchase Agreement.

4.3 Software Maintenance Fees. As compensation for the Software Maintenance provided by Licensor under this Agreement, Licensee shall pay Licensor the Software Maintenance Fees as set forth in Licensee's respective Purchase Agreement.

4.4 Expenses. If Licensee requests technical assistance services from Licensor, Licensee shall be responsible for all reasonable and necessary travel, food, lodging, and related out of pocket expenses incurred by the Licensor personnel providing the technical assistance services in addition to payment of any applicable hourly rates.

4.5 Audit of Use. Licensor may, at its expense, audit Licensee's use of the Licensed Product. Audits shall be conducted during regular business hours at Licensee's place or places of business and shall not unreasonably interfere with Licensee's business activities. Audits shall be conducted no more than once annually. If, as a result of any such audit, Licensor identifies unauthorized use of the Licensed Software, Licensee shall pay, in addition to a full License Fee for each unauthorized use of the Licensed Software in use by Licensee, all reasonable expenses of Licensor in conducting the audit.

4.6 Payment. All fees or amounts due to Licensor under this Agreement shall be due and payable in full in U.S. currency within thirty (30) days of the date of Licensor's invoice for said fees or amounts. Licensee shall have no right of offset or withholding under this Agreement. In the event the sales invoice shall be placed by Licensor in the hands of an attorney for the purpose of collection, with or without litigation, or for the purpose of enforcing Licensor's security interest in the Licensed Products, Licensee agrees to pay any and all costs associated with such placement, including, but not limited to, attorney's fees and costs incurred prior to, during, or subsequent to trial, and including, without limitation, collection, bankruptcy, or other creditor's rights proceedings.

4.7 Interest on Late Payments. All fees and amounts due to Licensor and not paid within thirty (30) days after the date such amounts are due and payable shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate of interest allowable by law.

4.8 Taxes and Other Charges. All License Fees, Service Fees, and Software Maintenance Fees are exclusive of media charges, shipping, handling, custom charges, and all state, local, and other taxes, or other taxes or charges (other than income or franchise taxes payable by Licensor) directly applicable to the licensing, installation, support or use of the Licensed Product. Licensee shall pay all charges or taxes or provide Licensor with an appropriate certificate of exemption within thirty (30) days of the date of any invoice or statement of Licensor or the taxing authorities. If Licensee elects to challenge the applicability of any tax or charge, Licensee shall pay the tax or charge

to Licensor or give Licensor evidence of payment to the taxing authorities or charging entity, and Licensee may thereafter challenge such tax or charge and seek a refund.

**5. EFFECTIVENESS OF TERMS.** BY INSTALLING THIS SOFTWARE, YOU SIGNIFY YOUR ACCEPTANCE OF EACH AND EVERY TERM AND CONDITION SET FORTH IN THIS AGREEMENT. THE LICENSE GRANTED UNDER THIS AGREEMENT IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF AND COMPLIANCE WITH ALL TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT OR DO NOT WISH TO COMPLY WITH ANY TERM OR CONDITION SET FORTH HEREIN, DO NOT INSTALL THIS SOFTWARE. ONCE THIS SOFTWARE IS INSTALLED, THE TERMS HEREOF WILL BE DEEMED TO HAVE BEEN ACCEPTED BY YOU AND YOU WILL BE BOUND BY ALL OF THE TERMS, CONDITIONS, AND RESTRICTIONS CONTAINED HEREIN.

## **6. SOFTWARE MAINTENANCE.**

6.1 Notification of Suspected Licensed Software Defects. If Licensee believes there is an Error in the Licensed Software, Licensee must notify Licensor of such Error in writing, or by telephone or email. After Licensor's analysis of the reported Error, Licensor will: (i) notify Licensee whether Licensor has verified the Error; (ii) where an Error has been verified, advise Licensee of available remedies; and (iii) where a remedy is not immediately available, notify Licensee of the need for further investigation. Errors reported to Licensor during the Warranty Period and subsequently verified by Licensor will be corrected in accordance with this Agreement at no charge to Licensee. Licensor reserves the right to determine the disposition of any and all reported Errors.

6.2 Licensee's Remedies for Licensed Software Defects. In all situations involving non-performance of the Licensed Software during the Warranty Period, Licensee's exclusive remedy is:

- (a) the correction or workaround of software Errors by Licensor; or
- (b) if, after repeated efforts, Licensor is unable to make the Licensed Software operate as warranted, Licensee shall be entitled to a refund of the pro-rated value of the function not provided by the Licensed Software. The Parties shall attempt to reach agreement as to the pro-rated value of the function not provided. If the Parties are unable to do so, Licensor shall make a determination of such prorated value, and Licensee shall have the option of accepting the pro-rated value so determined or returning the Licensed Product for a full refund of the License Fee.

6.3 Support Line. As a service of the Software Maintenance Program, Licensor shall provide Licensee the availability of telephone or email services for questions or problems associated with the Licensed Products, as updated from time to time by notice to licensee, during normal business hours from 8:30 AM to 5:30 PM EST, Monday through Friday except for holidays.

### **6.4 Error Correction and Enhancement Releases.**

6.4.1 Provided Licensee has paid the License Fees and all other fees and amounts due and owing Licensor under this Agreement, Licensor shall provide Error Correction Releases (which do not contain any Enhancements), if any, and Minor Enhancement Releases, if any, at no charge during the Warranty Period. After the expiration of the Warranty Period, Licensor shall provide Error Correction and Minor Enhancement Releases, if any, at Licensor's then current prices, unless Licensee has elected coverage under the Software Maintenance Program pursuant to Section 6.5, or in the event that Licensee has purchased a currently active Term License, in which case there will be no separate charge for Error Correction and Enhancement Releases, both Minor and Major, during the Term of this Agreement.

6.4.2 Error Correction and Enhancement Releases are the property of Licensor. Error Correction and Enhancement Releases are licensed to Licensee subject to the terms and conditions of this Agreement and, upon

release, become a part of the Licensed Software and the Licensed Product, as the case may be. Each Release shall consist of one or more Licensed Software programs and/or files in Object Code, or through some other medium as determined by Licensor in its sole discretion. Each Release shall also provide documentation informing Licensee of the Error Correction or Enhancement, including any significant operational differences known to Licensor. The documentation in any Releases shall be a part of the Licensed Documentation.

6.4.3 Licensee shall be responsible for the installation of all Error Correction or Enhancement Releases. Installation services are not included in Licensor's prices for Releases and shall be separately billed to and paid by Licensee, if Licensee requests such services.

6.4.4 Licensor shall not be obligated to provide Error Correction or Enhancement Releases beyond the Warranty Period unless Licensee has maintained coverage under the Software Maintenance Program or Term License.

## 6.5 Software Maintenance Program

6.5.1 Per the terms of Licensee's respective Purchase Agreement, Licensee may purchase subscriptions for the Software Maintenance Program for the Licensed Software; provided, however, that:

- (a) If Licensee fails to subscribe to the Software Maintenance Program in any year, then Licensee shall be forbidden from subscribing to the Software Maintenance Program at any time during the remaining Term of this Agreement; and
- (b) Licensor will not provide Software Maintenance for any modifications to the Licensed Software which have not been provided by Licensor.

6.5.2 Purchase of a subscription for the Software Maintenance Program is an extension of the Error detection and Enhancement services offered by Licensor, and entitles Licensee to receive all new Release announcements, application notes, Error Correction Releases and Enhancement Releases, if any, issued during the Software Maintenance Term.

6.5.3 The Software Maintenance Program shall be provided upon the terms specified in Licensee's respective Purchase Agreement. Prior to expiration of each Software Maintenance Term, Licensor will invoice Licensee for the next consecutive Software Maintenance Term, equal to or substantially similar in time to the terminating Software Maintenance Term, unless Licensor is notified in writing by Licensee no less than sixty (60) days prior to the Software Maintenance Term renewal date that Licensee elects not to renew subscription for the Software Maintenance Program.

## 7. LICENSEE'S REPRESENTATIONS AND WARRANTIES.

7.1 Compliance with Terms. Licensee shall monitor the Licensed Product and ensure that it is used only in compliance with the terms of this Agreement. Licensee shall be responsible and liable for any and all non-compliance with this Agreement by Licensee or by any person or entity who obtains access to the Licensed Product through Licensee.

7.2 Suitability of Licensed Product. Licensee represents and warrants that as of the time of Acceptance, Licensee will have evaluated, tested, and examined the Licensed Product and determined independently that the Licensed Product is suitable for the use intended by this Agreement. Licensee assumes all responsibility and risk of selection, installation, use, efficiency and suitability of the Licensed Product, and subject to the provisions of Section 9, Licensor shall have no liability therefor.



7.3 Notification of Defects. Licensee shall notify Licensor in writing of any material defect Licensee believes exists in the Licensed Product, and Licensee shall provide to Licensor all information known or reasonably available to Licensee regarding the alleged defect.

7.4 Third Party Material. With respect to all computer programs and data and hardware not provided by Licensor and to be used or reproduced during Licensee's use of the Licensed Software, Licensee represents that it has all necessary rights to use or reproduce the computer programs and that no use of the Licensed Software in connection therewith shall be made that causes an infringement of the right of any third party.

7.5 Licensee's Responsibility. Licensee shall be exclusively responsible for the supervision, management, and control of its use of the Software, including, but not limited to (a) assuring proper configuration of equipment or devices; (b) establishing adequate operating methods; and (c) implementing procedures sufficient to satisfy its obligations for security under this Agreement, including appropriate action between it and its employees to prevent misuse, unauthorized copying, modification, or disclosure of the Software.

## **8. REPRODUCTION.**

8.1 Reproduction. Licensee shall only be permitted to make copies of the Licensed Software and Licensed Documentation for backup, training, testing, disaster, archival, or disaster recovery purposes. Each and every such copy, in whole or in part, of the Licensed Software shall contain all of Licensor's restrictive and proprietary notices in the form and content as they appear on or in the Licensed Software or Licensed Documentation provided by Licensor. All Copies shall remain the property of Licensor.

## **9. LIMITED WARRANTY.**

9.1 Limited Warranty. Licensor warrants to Licensee that during the first thirty (30) days after the Delivery Date (the "Warranty Period") the Licensed Products will conform to Licensor's published specifications in effect on the Delivery Date, and that the Licensed Software will perform substantially as described in the accompanying Licensed Documentation. Licensor does not warrant (a) that the Licensed Software will meet Licensee's requirements; (b) that operation of the Licensed Software will be uninterrupted; (c) that the Licensed Product is error free; (d) that all defects in the Licensed Product will be corrected; or (e) any change or modification of the Licensed Software made by Licensee; provided, however, any change or modification properly made by Licensee in accordance with instructions contained in the Licensed Documentation for the Licensed Software shall not void the warranty provided by Licensor herein. Laws from time to time in force may imply warranties that cannot be excluded or can only be excluded to a limited extent. This Agreement shall be read and construed subject to any such statutory provisions.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR MAKES NO OTHER WARRANTIES OR REPRESENTATIONS RELATING TO THE LICENSED SOFTWARE OR ITS PERFORMANCE OR WITH RESPECT TO THE LICENSED DOCUMENTATION. ALL WARRANTIES, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE LICENSED PRODUCTS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY LICENSOR OR ITS AUTHORIZED REPRESENTATIVES OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE) ARE EXPRESSLY OVERRIDEN, DISCLAIMED AND EXCLUDED.

No warranties as may be set forth herein shall be applicable to any free Products which shall be accepted by Licensee on an "as is" basis, or during any demo or trial use of the Licensed Software by Licensee.

9.2. Licensor's Warranty Obligations; Limitations of Limited Warranty. In the event of breach of the Limited Warranty provided in Section 9.1 of this Agreement, Licensor's entire liability and Licensee's exclusive remedy will be to exchange the defective Licensed Software or, at the option of Licensor, to take back the defective Licensed

Software for a cash refund (a) of any fees prepaid by Licensee, or (b) where Licensee has elected to purchase the Licensed Software, an amount equal to the purchase price paid by Licensee for the Licensed Product; provided that any such refund shall be paid following Licensor's receipt of all returned defective Licensed Software. Licensee acknowledges that this Section 9.2 sets forth Licensee's exclusive remedy, and Licensor's exclusive liability, for any breach of warranty or other duty related to the quality of the Licensed Products.

The Limited Warranty provided in this Section 9 does not apply to problems resulting from:

- (a) improper installation of the Licensed Software by Licensee, or any other party other than the Licensor, or the installation of the Licensed Software on improper hardware;
- (b) modification of the Licensed Software not undertaken or performed by Licensor;
- (c) malfunctions in any computer hardware or software or systems files not provided by Licensor;
- (d) accident of Licensee or at the Licensee's premises;
- (e) neglect of Licensee;
- (f) misuse of the Licensed Software by Licensee, its Operators, its employees, and agents and all persons or entities who have access through Licensee to the Licensed Product;
- (g) use of the Licensed Software with data of any entity other than Licensee; or
- (h) a power surge or failure at Licensee's physical location.

**9.3 LIMITATION OF LIABILITY; ACTIONS.** The remedies set forth in Section 9.2 are Licensee's sole and exclusive remedies for any breach of warranty by Licensor. LICENSOR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, STATUTORY, PUNITIVE OR EXEMPLARY DAMAGES OF ANY SORT, EVEN IF LICENSOR HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, WITHOUT LIMITATION, (a) ANY DAMAGES FOR LOST PROFITS, (b) ANY DAMAGES RESULTING FROM LOSS OF USE OR LOSS OF DATA, INTERRUPTION IN USE OR AVAILABILITY OF DATA, OR (c) STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS. UNDER NO CIRCUMSTANCE SHALL LICENSOR BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE LICENSE FEES PAID BY LICENSEE FOR THE LICENSED PRODUCT THAT IS THE SUBJECT OF A WARRANTY OR INFRINGEMENT CLAIM. IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY ACTION OR REMEDY BEYOND THOSE DESCRIBED IN THIS AGREEMENT.

NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT, OTHER THAN AN ACTION BY LICENSOR TO COLLECT ANY FEES DUE HEREUNDER.

**9.4 Allocation of Risk.** This Section 9 of this Agreement allocates the risks under this Agreement between Licensor and Licensee. Licensor's License Fees reflect this allocation of risk and the warranties, limitation of warranties, and limitation of liability in this Section 9.

**THE PROVISIONS OF THIS SECTION 9 STATE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO LICENSEE, AND LICENSOR'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, OR STRICT LIABILITY IN TORT CLAIM AND ANY CLAIM REGARDING THE PERFORMANCE OR NON-PERFORMANCE OF THE LICENSED PRODUCT.**

## **10. INDEMNITY.**

10.1 Indemnity by Licensee. Licensee shall be solely responsible for, and shall indemnify, defend, and hold Licensor free and harmless from all damages, liabilities, charges, and expenses (including reasonable attorneys' fees) from all claims, lawsuits, or other proceedings arising out of or relating to (a) Licensee's use of the Licensed Product in a manner not permitted by this Agreement, not permitted by Licensor, or not in conformance with Licensor's written requirements, (b) the acts or omissions of Licensee, its Operators, its employees, and agents and all persons or entities who have access through Licensee to the Licensed Product, (c) Licensee's failure to promptly install a Release, or (d) relating to an infringement of any right resulting in any way from the use of the Licensed Software with other software or materials not licensed to Licensee by or not approved by Licensor.

10.2 Indemnity of Right of Use. Licensor shall defend or settle, at its own expense, any claim made against Licensee that the Licensed Product, in whole or in part, infringes any United States patent, published patent application, copyright, trade secret, or other proprietary right, and Licensor shall indemnify and hold harmless Licensee against any final judgment, including an award of attorneys' fees, that may be awarded by a court against Licensee as a result of the foregoing; provided, however, Licensee shall (a) give Licensor written notice of such claim within thirty (30) days of the date Licensee first knows or should know of the claim and (b) provide Licensor with reasonable cooperation and all information in Licensee's possession related to said claim. Licensor shall have sole control of the defense of such claims and all related settlement negotiations. Reasonable out of pocket expenses incurred by Licensee in providing assistance to Licensor in defense of such a claim shall be reimbursed by Licensor.

10.3 Remedy for Claimed Infringement. If a claim is made that the Licensed Product, or any portion thereof, infringes any United States patent, copyright, trade secret, or other proprietary right, Licensor, at its sole expense and option, shall either: (a) procure for Licensee the right to exercise the rights and licenses granted hereunder with respect to the Licensed Product; (b) modify the Licensed Product to make it non-infringing but continue to meet the Product Specifications; (c) replace the Licensed Product with equivalent but non-infringing software of like functionality that meets the Product Specifications; or (d) terminate this Agreement and refund any fees prepaid by Licensee, or where Licensee has elected to purchase the Licensed Software, then an amount equal to the License Fee less depreciation based on a 3-year straight line schedule, and upon the return to Licensor of the Licensed Product; provided, however, that the liability of Licensor pursuant to this Section 10.3 shall be subject to the limitations set forth in Section 9.3 of this Agreement, and Licensor shall have no liability for any claim of infringement based on use of a superseded or altered Release of the Licensed Product if the infringement would have been avoided by the use of the most current, unaltered Release of the Licensed Product which is available to Licensee either during the Warranty Period or would be available under the Software Maintenance Program, regardless of whether Licensee subscribes to the Software Maintenance Program.

10.4 Limitation of Indemnity. Licensor shall have no liability to Licensee or any assignee, transferee, or sublicensee of Licensee, as applicable, for any claim of infringement that is based upon any combination of the Licensed Software with software not supplied by or authorized by Licensor if such claim would have been avoided but for such combination; or any modifications to the Licensed Software other than Releases provided by Licensor or otherwise approved by Licensor.

## **11. TERMINATION AND DEFAULT.**

11.1 Termination by Licensor. Licensor may terminate this Agreement and the license granted to Licensee upon the occurrence of any of the following events:

- (a) Licensee fails to pay Licensor any fee, charge, tax, or other reimbursement when due and the failure to pay is not cured within ten (10) days of Licensee's receipt of Licensor's written notice thereof;
- (b) Licensee transfers title to or possession of the Licensed Product without Licensor's prior written consent;

- (c) Licensee breaches any material obligation of Licensee under this Agreement and such breach is not cured within thirty (30) days of Licensee's receipt of written notice thereof from Licensor;
- (d) Licensee becomes insolvent, or is adjudicated as bankrupt, or voluntarily seeks protection under any bankruptcy or insolvency law; or
- (e) Licensee makes an assignment of its assets for the benefit of creditors or any arrangement with its creditors.

11.2 Termination by Licensee. Provided Licensee is not in default under this Agreement or the Purchase Agreement, the Agreement may be terminated by Licensee by giving Licensor ninety (90) days prior written notice of termination. Any such termination by Licensee shall be without refund of any License Fee, Service Fee, Software Maintenance Fee, or any other amount paid, paid in advance, or then due and payable to Licensor. Licensee may terminate this Agreement in the event Licensor breaches any material obligation of Licensor under this Agreement and such breach is not cured within thirty (30) days of Licensor's receipt of written notice thereof from Licensee or Licensor becomes insolvent, or is adjudicated as bankrupt, or voluntarily seeks protection under any bankruptcy or insolvency law.

11.3 Licensor Remedies Upon Termination. In the event of any termination of this Agreement:

- (a) Licensee shall cease all further use of the Licensed Product, or any portion thereof, in all forms and on all media and computer memory, and Licensee shall immediately: (i) surrender and deliver the Licensed Product and all Copies thereof to Licensor; or (ii) at the option of the Licensor, destroy all Copies of the Licensed Product, including backup and archival copies, and provide satisfactory evidence of such destruction in the form of an affidavit certifying that Licensee has complied with the terms of this Section 11.3(a), delivered to Licensor within one (1) month following termination;
- (b) Licensee shall pay all outstanding fees and amounts owed to licensor as of the date of termination;
- (c) Licensor may cease performance of Licensor's obligations under this Agreement, without liability to Licensee;
- (d) where such termination is the result of a breach or threatened breach of this Agreement by Licensee, Licensor may apply for and obtain injunctive relief against the breach or threatened breach; and
- (e) Licensee shall promptly return to Licensor all of Licensor's Confidential Information.

11.4 Equitable Relief. The Parties acknowledge and agree that there may be no adequate remedy at law for the failure of the other Party to comply with any of the material terms and conditions of this Agreement, including, without limitation, a failure to cease the use of the Licensed Product upon termination of the license or a breach of the confidentiality provisions of Section 12, and the Parties agree that, in the event of any such failure, the non-breaching Party shall be entitled to equitable relief by way of temporary restraining order, temporary injunction and permanent injunction and such other and further relief as any court of competent jurisdiction may deem proper.

11.5 Remedies Cumulative. The rights and remedies of Licensor and Licensee in this Section 11 shall be cumulative and in addition to all other rights and remedies available at law and in equity.

11.6 Survival. The provisions of this Agreement which by their sense and context should survive any termination or expiration of this Agreement, including without limitation Sections 3, 10, 11, 12, and 14 of this Agreement, shall survive termination of this Agreement and shall remain binding on the Parties.

## **12. CONFIDENTIALITY.**

12.1 As used in this Agreement, the term "Confidential Information" means: all information, including, but not limited to, the trade secrets and know-how of the respective Parties, any information marked "Confidential" or "Proprietary" and, in the case of Licensor, the Licensed Product; provided, however, Confidential Information shall not mean any information that:

- (a) is known to the receiving Party at the time of disclosure by the disclosing Party;
- (b) is developed independently by the receiving Party without use of the disclosing Party's Confidential Information;
- (b) is within, or later falls within, the public domain without breach of this Agreement by the receiving Party;
- (d) is publicly disclosed with written approval of the disclosing Party; or
- (e) becomes lawfully known or available to the receiving Party without restriction from a source having the lawful right to disclose the information without breach of this Agreement by the receiving Party.

The receiving Party shall have the burden of proof as to establishing by competent evidence any of the exceptions set forth in Section 12.1(a) to (e) above.

12.2 In the event the receiving Party is legally requested or compelled in any form to disclose any of the disclosing Party's Confidential Information, the receiving Party, unless prohibited by applicable law, shall provide the disclosing Party with prompt written notice of such request, so that the disclosing Party may seek a protective order or pursue other appropriate remedies to protect the confidentiality of its information. If such protective order or other remedy is not obtained, the receiving Party will furnish only that portion of the Confidential Information which the receiving Party, upon the opinion of its counsel, is legally required to furnish. The receiving Party will reasonably assist the disclosing Party in its efforts to obtain a protective order or other remedies to protect or limit the disclosure of the information subject to the request.

12.3 Each Party acknowledges that in the performance of this Agreement a Party may receive Confidential Information from a disclosing Party and that such Confidential Information is the exclusive property of the disclosing Party. The receiving Party agrees to hold the Confidential Information of the disclosing Party in strict confidence in accordance with the provisions of this Agreement. A receiving Party:

- (a) shall not permit or suffer its employees or agents to remove any proprietary or other legends or restrictive notices contained or included in any Confidential Information provided by the disclosing Party;
- (b) shall not permit or suffer its employees or agents to copy or modify any Confidential Information except as specifically authorized in this Agreement;
- (c) shall not disclose any Confidential Information to a third party without the prior written consent of the disclosing Party;
- (d) shall only use the disclosing Party's Confidential information for purposes of performing its obligations under this Agreement, and shall not otherwise use the information for its own benefit or for the benefit of any third party; and

- (e) agrees to keep secure and maintain the Confidential Information of the disclosing Party in a manner no less protective than that used to maintain the confidentiality of the receiving Party's own Confidential Information.

12.4 Limitation on Disclosure. A receiving Party may disclose Confidential Information to its employees or agents under the control and direction of the receiving Party only in the normal course of business and on a need to know basis within the scope and purpose of this Agreement. Provided, however, prior to any disclosure all such agents shall have entered into written agreements with the receiving Party requiring such agents to treat and use all such Confidential Information in a manner consistent with the terms and conditions of this Agreement. Except as expressly set forth herein, no licenses under any patent, copyright or other intellectual property rights of either Party are granted.

12.5 Return of Confidential Information. Upon any termination, cancellation, or rescission of this Agreement, a receiving Party shall, at the option of the disclosing Party: (i) surrender and deliver all Confidential Information of the other Party, including all copies thereof; or (ii) destroy the Confidential Information and all copies thereof and provide satisfactory evidence of such destruction in the form of an affidavit certifying such destruction to the disclosing Party within one (1) month following termination.

12.6 Disclosure of Software Constitutes Incurable Material Breach. Licensee acknowledges and agrees that any disclosure of the Software to a third party in violation of the terms of this Agreement constitutes a material, incurable breach of this Agreement and shall result in the automatic termination of this Agreement and the immediate termination of all licenses granted to Licensee by this Agreement. Licensee further agrees that it shall be strictly liable for all damages to Licensor that result from any disclosure of the Software to any third party.

### **13. PRIVACY POLICY.**

#### 13.1 Privacy Policy.

- (a) Licensor will implement and maintain all reasonable and appropriate administrative, organizational, technical and physical measures to protect Licensee information from loss, misuse, unauthorized access, disclosure, alteration and destruction. Licensor shall process Licensee information only in a manner compatible with and relevant for the purpose for which it was collected or authorized by Licensee. Licensee acknowledges and agrees that Licensee has the sole responsibility to specify and manage all data and information uploaded to Licensor websites, or if applicable, Licensor cloud, by Licensee, and which groups, third parties or similar persons or entities are authorized to view and analyze the Licensee data and information. Licensee shall indemnify Licensor against any and all claims arising from Licensee data and information uploaded to the Licensor websites or Licensor cloud by Licensee.
- (b) Licensor shall use credit card information solely for payment processing and fraud prevention efforts. Credit card information, and other sensitive information required to process a credit decision, is not used for any other purposes by Licensor, its financial service providers or its affiliates, and will not be retained any longer than necessary to provide Licensee services.
- (c) Licensor shall gather Licensee information, which may be aggregated with other licensees' information on a purely non-identifiable basis for knowledge sharing, research and design purposes and to understand more effectively how the Licensed Products are used by licensees, in order to improve subsequent generations of the Licensed Products.
- (d) In the event Licensor becomes aware of any possible or actual loss of, unauthorized or unlawful access to, acquisition of, use of, disclosure of, or any other compromise of Licensee's confidential or proprietary information within the possession or control of Licensor, Licensor shall promptly notify Licensee of such security breach. In the event of such security breach, Licensor shall cooperate in good faith with Licensee to investigate and resolve the security breach and mitigate any harmful effects of such breach.

## 14. GENERAL.

14.1 Relationship of the Parties. The Parties hereto are and shall remain independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture, or agency relationship between the Parties. Neither Party shall have the right to obligate or bind the other Party in any manner to any third party.

14.2 Assignment/Sublicense. Licensee shall not, directly or indirectly, by operation of law or otherwise, transfer or assign the Licensed Product or this Agreement, or transfer, assign or sublicense any license rights granted hereunder, in whole or in part, without having secured the prior written consent of Licensor, which consent shall be at Licensor's sole discretion. Any attempted assignment in violation of this Section 14.2 shall be void. Licensor may freely assign this Agreement and the rights afforded hereunder to any entity which acquires title to the Licensed Product.

14.3 Notices. All notices required to be given pursuant to this Agreement shall be transmitted either by (i) delivery in person, (ii) registered mail, (iii) certified mail, return receipt requested, or (iv) overnight mail, addressed to the Party to be notified at the address given by such Party on the Purchase Agreement, or to such other address (or person) as such Party shall specify by like notice hereunder.

14.4 Export Controls. Each Party to this Agreement acknowledges its obligations to control access to Technical Data (as defined by the U.S. Department of Commerce, Office of Export Administration) under the U.S. Export Control Laws and Regulations and agrees to adhere to all applicable U.S. Export Control Laws and Regulations with regard to any Technical Data received under this Agreement. Licensee may not re-export or divert the Licensed Products or any related Technical Data, documents or materials, or direct products thereof, to any other country or any resident thereof, unless Licensee has obtained appropriate prior authorization from Licensor and the U.S. Department of Commerce.

14.5 Compliance with Laws. Each Party shall comply with all applicable state, federal and local laws, executive orders and regulations in the performance of its obligations under this Agreement.

14.6 Headings. The headings and captions appearing in this Agreement have been inserted for the purposes of convenience and ready reference only and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the provisions to which they appertain.

14.7 Form. Where the context so admits, words and expressions appearing in the singular in this Agreement may be interpreted in the plural, and vice versa.

14.8 Integration. This Agreement, together with the Purchase Agreement, constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between them, whether written or oral, between them relating to the subject matter of this Agreement. This Agreement may not be supplemented, explained or interpreted by any evidence of trade usage or course of dealing. UNDER NO CIRCUMSTANCES MAY THE TERMS OF THIS AGREEMENT OR ANY LICENSOR PURCHASE ORDER BE AMENDED, MODIFIED, SUPPLEMENTED, ALTERED, SUPERCEDED OR REPLACED BY ANY NON-LICENSOR INVOICE OR NON-LICENSOR PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT DELIVERED BY LICENSEE TO LICENSOR. EACH PARTY ACKNOWLEDGES AND AGREES THAT, AS A CONVENIENCE TO LICENSEE AND ONLY FOR LICENSEE'S INTERNAL ACCOUNTING PROCEDURES, LICENSEE MAY DELIVER TO LICENSOR A LICENSEE INVOICE OR LICENSEE PURCHASE ORDER OR OTHER SIMILAR DOCUMENT FOR ANY TRANSACTION CONTEMPLATED HEREUNDER AND THAT NO ACTION BY LICENSOR, INCLUDING LICENSOR'S DELIVERY OF ANY LICENSED MATERIALS OR ACCEPTANCE OF PAYMENT, SHALL BE DEEMED TO BE ACCEPTANCE OF ANY OF THE TERMS OR CONDITIONS CONTAINED IN SUCH LICENSEE INVOICE OR LICENSEE PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT AND SUCH TERMS AND CONDITIONS

SHALL BE VOID AND OF NO FORCE OR EFFECT, UNLESS ACCEPTED BY LICENSOR PURSUANT TO A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES AND EXPRESSLY REFERRING TO THIS SECTION 14.8.

14.9 Modification or Amendment. No modification to, amendment of, or other change in this Agreement shall be binding on either Party unless it is in writing and signed by authorized representatives of both Parties.

14.10 Waiver. No waiver of any provision of this Agreement shall be effective unless made in writing and signed by the waiving Party, nor shall any such waiver, if made, constitute a waiver of any subsequent breach of the same or of any other provision of this Agreement.

14.11 Force Majeure. Neither Party shall be liable to the other by reason of any failure of performance hereunder (except obligations to pay) if such failure arises out of causes beyond such Party's reasonable control, despite the reasonable efforts, and without the fault or negligence of such Party. A Party experiencing such an event shall give as prompt notice as possible under the circumstances.

14.12 Fees and Expenses. If either Party institutes an action to enforce this Agreement or any of its terms, the prevailing Party shall also be entitled to recover all of its costs, expenses and reasonable attorneys' fees.

14.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute but one instrument.

14.14 Authority to Contract. Each Party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed.

14.15 Jurisdiction and Venue. Should any claim or controversy arise between the Parties under the terms of this Agreement or in furtherance of this Agreement, such claim or controversy shall be resolved only in the state or federal courts of Mecklenburg County, North Carolina, and said state and federal courts for the State of North Carolina shall be the only appropriate jurisdiction and venue therefore. Licensee hereby submits to said jurisdiction and venue.

14.16 Governing Law. This Agreement shall be construed in accordance with and governed by the substantive laws of the State of North Carolina. The Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

14.17 Severability. If any provision of this Agreement is held invalid or unenforceable under any applicable law, such invalidity or unenforceability will not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, and this Agreement shall be construed as if said invalid or unenforceable provision had not been contained herein.

14.18 Negotiation. This Agreement is the result of negotiation between the Parties and, accordingly, shall not be construed more strongly for or against either Party regardless of which Party was more responsible for the preparation of this Agreement or any portion thereof.

14.19 Government End User. Where the Licensed Products are used by or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), it is provided with 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 Products clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Products--Restricted Rights at 48 CFR 52.227-19, as applicable.

14.20 No Modifications. Licensee agrees not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of the Licensed Products, or any part thereof, except where first authorized in writing by Licensor. Licensee agrees not to intercept, capture, emulate, or redirect the communications protocols used by Licensor for any purpose, including without limitation



causing the Licensed Products to connect to any computer server or other device not authorized by Licensor or in a manner not authorized by Licensor.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Company Name \_\_\_\_\_

Dated \_\_\_\_\_