## TERMS AND CONDITIONS

IN WITNESS WHEREOF, the parties agree hereto have caused this Agreement to be executed as of the Effective Date. The parties agree as follows:

### 1. Rights Granted & Permitted Use

Upon and subject to receipt of payment by Supplier of the applicable initial license, set-up and training fees set out in the Order Form(s), as well as any applicable initial Maintenance Program Fee, Supplier will grant to Customer for use in connection with its internal business operations a limited, non-exclusive, non-transferrable, perpetual license to the Software and Documentation, subject to the Permitted Use and the terms set forth in this Agreement. Any Updates (provided pursuant to Section 7 (Maintenance Program (Updates and Technical Support)) will form part of the Software and will be subject to rights granted in this Agreement. Customer may permit its employees, agents and contractors to use the Software for purposes permitted pursuant to this Agreement and Customer will be responsible for their compliance in accordance with the terms of this Agreement. Customer may make a reasonable number of copies of the Software for testing, archival and/or back-up purposes, to be used only when the primary copies of the Software are not operational. All legends, trademarks, trade names, copyright marks and other proprietary notices included in the original copies of the Software must be maintained as part of any and all testing, archival, back-up or other copies of the Software made by Customer. All rights not expressly granted to Customer hereunder are reserved by Supplier. Customer acknowledges that the Software may require activation by way of an activation key on initial installation and from time to time based on certain events, including, without limitation, Updates and changes to hardware on which the Software is installed. Customer acknowledges that the activation keys and internal controls in the Software do not necessarily restrict usage to the Permitted Use and do not necessarily ensure compliance with this Agreement.

### 2. License Restrictions

Customer agrees (a) subject to any non-waivable rights Customer may enjoy under applicable law, not to decompile, disassemble, reverse engineer, or otherwise attempt to derive the Software's source code from the object code; (b) not to modify, enhance, change the data structures for or create derivative works from, the Software, (c) not to rent, lease, sell, sublicense or otherwise transfer the Software to third parties; (d) not to make the Software available in any form to any person other than Customer's employees, agents and contractors whose job performance requires such access; and (e) to use reasonable care and protection to prevent the unauthorized use, copying, publication or dissemination of the Software. Customer shall not allow access to the Software by any service bureau, third party outsourcer, or other similar third party service provider unless Supplier consents to such access in writing.

### 3. Ownership of Intellectual Property; Customer Input

As between Supplier and Customer, Supplier retains all title, ownership, and intellectual property rights in and to the Software and Documentation, and all developments by Supplier in connection with this Agreement. Customer acknowledges and agrees that it is only licensing the right to use Supplier's Software and Documentation and that no sale or other transfer of any title or ownership or any proprietary interest of any kind to such Software or Documentation is contemplated hereunder, other than the sale of the limited licenses as expressly granted herein. Except as specified in Section 1 (Rights Granted & Permitted Use) or as expressly authorized in writing by Supplier and, subject to any non-waivable rights Customer may enjoy under applicable law, Customer shall not allow for any duplicates or reproduction of the Software to be made and, upon the termination of this Agreement, shall promptly (and no later than within thirty (30) days of termination) return to Supplier all originals and copies of the Software or provide validation that the Software has been permanently deleted from all of Customer's systems and destroyed.

Supplier shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any Customer Input. Supplier shall have no obligation to make Customer Input an Update. Customer shall have no obligation to provide Customer Input.

### 4. Use of Logo for Promotional and Marketing Materials

Unless indicated otherwise in the applicable Order Form, Customer provides Supplier with permission to use its trademark, logo and trade name ("Branding") within Supplier's promotional and marketing materials. Supplier is granted no other right to the Branding and acknowledges that it shall not gain any proprietary interest in the same. Supplier is under no obligation to make use of, or to provide compensation for, the right or permission granted by Customer to the Branding. Supplier shall be the exclusive owner of all right, title, and interest, including copyright in its promotional and marketing materials. The permission to use the Branding may be terminated at any time by Customer by providing thirty (30) days' written notice to Supplier. Upon such termination, Supplier shall refrain from future use of the Branding; however, Supplier may continue to distribute and use the promotional and marketing materials where Customer's Branding has been previously printed prior to the notice of termination and where such placements cannot be discontinued or altered without Supplier incurring a penalty.

### 5. Implementation, Training and Consulting

If so indicated in the Order Form(s), Supplier will provide to Customer implementation, training services and/or consulting services to Customer. Unless otherwise specifically noted in the applicable Order Form, training will be held during weekdays. Supplier's installation and training personnel will have expertise and actual experience in the application area designed for installation at Customer's site. Customer acknowledges that Supplier's services are scheduled on a first come, first served basis, and shall be mutually agreed upon by Supplier and Customer subject to Supplier's availability. Should Customer require rescheduling of confirmed installation and training service appointment, Supplier will make commercially reasonable efforts to accommodate Customer's request. If Customer cancels a scheduled and confirmed training session, Customer will be responsible for Supplier's standard cancellation fees and any other charges as specified in the applicable Order Form. If the parties agree that training will be provided on-site at Customer's facility, Customer will:

(i) provide and have properly prepared and set up an adequate training room or space; and

(ii) at least one (1) week prior to scheduled training, have the hardware loaded with the operating system software and the Software, with all being adequately tested on-site. All travel and related expenses necessitated by training, implementation, and/or consulting services being rendered by Supplier hereunder at Customer designated sites will be reimbursed by Customer to Supplier. Such travel and related expenses will include reasonable coach class airfare, transportation to and from Customer site, lodging, meals and miscellaneous (e.g. tips, tolls, etc.) and may include travel time at Supplier's standard travel rate. Unless otherwise specified in the Order Form, all phases/sessions of training must be completed within six (6) months from receipt of the Software, or all prepaid training fees will be forfeit. Upon Customer's request, Supplier will provide further services to train any additional Customer personnel on the features, operation, and use of the Software, at Supplier's standard price list per diem rates in effect at the time such training is requested by Customer. Additional services that are required as a result of Customer's action, inaction or failure to meet its obligations, including delays or wait time caused by issues related to Customer's hardware and software, shall be billable to Customer and will be invoiced at Supplier's then-current rates.

### 6. Customer Responsibilities

Within a reasonable period of time following the execution of this Agreement, and prior to the commencement of installation of the Software, Customer shall appoint a member of its staff to act as its project lead. The project lead will serve as the main contact for Supplier's personnel in connection with any installation activities, disseminate information from Supplier to the various departments at Customer's operation, as applicable and relay any required information to Customer personnel in a timely manner. If the implementation affects multiple areas of Customer's operations, then it shall also appoint a team comprised of management level staff from those operational areas involved in the installation to act as its project team. The project lead and/or project team, as applicable, shall have primary responsibility for the coordination and execution of the installation. The project lead and/or the project team shall: (a) have a clear understanding of the general manager's or other top-ranking executive's vision and purchasing decision for the installation of the Software and shall communicate this vision to all levels of Customer's staff; (b) be familiar with and involved in Customer's daily operations; (c) be Customer's primary decision-makers, within their respective areas of operational responsibility, for any policies and procedures which may be involved in the implementation of the Software; (d) report to the general manager or other top-ranking manager as it relates to the responsibilities of installation coordination; (e) ensure that the minimum system requirements set forth in in the Order Form(s), related Documentation and/or the applicable exhibit have been met or exceeded; (f) serve as liaison with other third party vendors who are involved in the installation process; and (g) be present during all phases of the installation and training process to include attendance at all designated training classes and ensure attendance of staff at scheduled training sessions.

Unless expressly agreed otherwise in the Order Form, Customer shall enter all data required for installation of the Software and shall be responsible for the integrity of such data. Supplier shall not have any liability for any Customer data, including for data that Supplier personnel may enter in an effort to assist Customer or any errors made in such efforts to assist Customer. Supplier reserves the right to refuse to do data entry and Customer agrees that Customer is solely responsible for providing sufficient staff to perform any data entry required for the installation of the Software.

Customer shall assume full responsibility for (i) the content of any database, (ii) the selection and implementation of controls on its access and use of the Software, (iii) the security of stored data and (iv) configuration data associated with the implementation of the Software.

### 7. Maintenance Program (Updates and Technical Support)

If Customer has paid the Maintenance Program Fee to Supplier in accordance with the terms of this Agreement, Supplier will, during the annual period covered by the Maintenance

Program Fee, provide, in a timely manner and without additional charge to the Maintenance Program Fee, the following to Customer:

(a) Commercially reasonable efforts to correct any Errors reported to it by Customer, provided such Errors relate to the proper functioning of the Software and have not been caused by negligence on the part of Customer, a computer malfunction, Third Party Materials or other causes external to the Software; and further provided that Customer acknowledges and agrees that not all Errors are capable of being corrected;

(b) Updates to the Software that Supplier makes generally available to its Customers, and Documentation as reasonably necessary for the proper function and continued material conformity of the Software with the applicable Documentation. Customer agrees to install all Updates to the Software made available by Supplier within ninety (90) days following such availability. If Customer fails to install any such Update, Supplier reserves the right to stop all implementation, training and support services until Customer installs such Update. Any programs which provides new functionality or expand the function of the Software and are regarded as New Products by Supplier, and for which Supplier separately charges other customers, are not covered by this Agreement, but may be offered to Customer for license on terms consistent with this Agreement; and

(c) Access to Supplier's technical support hotline during the hours set out in the applicable Order Form, subject to any other terms and conditions indicated in the applicable Order Form.

Outside of the hours set out in the applicable Order Form, non-emergency telephone support will be charged to Customer at Supplier's then-current rates and any additional terms and conditions set forth in the Order Form will apply. Customer acknowledges and agrees that telephone support is intended to address specific problems experienced by Customer relating to the Software, and is not intended to train Customer's employees or to support third party products ("Other Assistance"). Supplier will advise Customer during a telephone support session if Supplier considers such telephone support to constitute Other Assistance. Following such notice, if Customer wishes for the telephone support session to continue, Customer will pay for such Other Assistance based on Supplier's then-current rates. In connection with the provision of technical support, Supplier may be required to access Customer's system to diagnose, and to resolve, certain issues. To the extent Customer supplies remote access facilities, Customer will be responsible to ensure such facilities are secure and readily available. Customer hereby consents and agrees that Supplier may access the Software by way of remote access for such purposes. Unless otherwise provided for in the Order Form, Supplier will not be responsible for providing technical support of Hardware or the related operating system and configuration. Customer agrees that Supplier will not be responsible for providing Hardware installation specifications (including those regarding cabling, power, space, etc.), or for the installation, operation, maintenance or technical support of Hardware.

Supplier's obligation to provide support is subject to the following conditions: (i) Customer uses the Software only in accordance with the terms and conditions of the Agreement; (ii) Software implementation, training, re-implementation, and system audit services must be provided by Supplier's employees or Supplier's Authorized Representatives; (iii) Customer has not modified or altered the Software; (iv) Customer has not authorized independent interfacing of third party components to the Software, or relevant database, particularly third party components that write to the database, without the express prior written consent of Supplier; (v) the Software, and the equipment on which it operates, is operated in accordance with the Documentation; (vi) the equipment on which the Software operates is in good operating condition; (vii) Customer implements all Updates on a timely basis and no later than ninety (90) days subsequent to the availability of the Updates; (viii) Customer obtains, maintains, and updates, as required, third party programs and such other software as is necessary for the proper operation of the Software; and (ix) Customer provides reasonable access to its systems (and, if applicable, such access is to be provided in accordance with the specifications set forth in the Documentation and the applicable exhibits) so as to enable Supplier to provide the technical support services, including, but not limited to, by way of telecommunications, internet or other remote access to the server environment in which the Software resides or such other method reasonably acceptable to Supplier. All time and materials expended by Supplier resulting from Customer's breach of such conditions shall be billed to Customer at Supplier's standard time and materials rates. Support provided pursuant to this Section relates to the Software and the Updates only. Unless, and only to the extent that, Supplier and Customer have expressly agreed for Supplier to provide hardware support pursuant to the Order Form, should the problems that arise be the result of hardware malfunction, Supplier will advise Customer to have the hardware/network repaired. Support resulting from hardware/network problems will be billed to Customer at Supplier's then-current hourly rates.

The Maintenance Program Fee for the initial annual period is set out in the Order Form. Once Customer pays the Maintenance Program Fee in respect of a given twelve-month period, Customer shall be entitled to access the Maintenance Program in respect of such maintenance period and shall not be entitled to a refund in respect of such Maintenance Program Fee.

8. **Interfaces**

Software interfaces to third party vendor systems may be available, as indicated in the Documentation. To the extent such third party vendor system interfaces are available, Supplier shall install the Software interfaces as agreed between the parties on the Order Form. Customer shall act as a liaison between Supplier and any third party vendor(s) with

which the Software shall interface. Customer shall have its third party vendor available at the time that Supplier is scheduled to install the interface and in order to assist with installation, as required by Supplier. Transactions processed by a third party vendor system may be subject to separate licensing requirements. Customer acknowledges and agrees that it has the sole obligation to obtain, or cause its third party vendor to obtain, any and all such licenses.

9. **Custom Development and Enhancement Requests**

This Agreement does not include any programming services for new software development or software modifications. Such work, if negotiated and agreed to between Supplier and Customer, shall be the subject of a separate agreement for development services between the parties. The fees, payment terms and delivery schedules related to such work shall be as outlined in such agreement for development services, and are independent of Software or services provided under this Agreement. Customer acknowledges that Supplier is not a contract development organization, but rather Supplier is a software developer that licenses its Software within specified industries. As such, Customer further acknowledges that the Software is a major and valuable asset of Supplier's business and, as such, Supplier shall have complete control of the design and development of the Software, including Updates to the Software. Therefore, Supplier has the right, and sole discretion, to reject any request for enhancement or modification to the Software by Customer. Should Customer require modification of any standard forms incorporated into the Software or design of new forms, any such customization work shall be contracted for separately at Supplier's then- current rates.

10. **Professional Services**

Supplier will provide Customer with the professional services, if any, set forth

in the Order Form(s) ("Professional Services"). Such Professional Services shall be scheduled as mutually agreed upon subject to Supplier's availability following receipt by Supplier of the signed Agreement and any related deposit. Should Customer require rescheduling of confirmed Professional Service dates, Supplier will make commercially reasonable efforts to accommodate Customer's request and provide Customer with the next available dates based on Supplier's then-current availability. Customer shall be responsible for paying for any Professional Services that have been scheduled and confirmed between Customer and Supplier if canceled or rescheduled by Customer less than thirty (30) days prior to the commencement of such Professional Services, unless (and only to the extent that) Supplier is able to reschedule the resource with another customer using commercially reasonable efforts.

11. **Payment Terms**

Customer agrees to pay to Supplier all Fees as set out in the Order Form(s). All Fees are payable in accordance with the terms set out in, and in the currency specified in, the Order Form(s). Unless otherwise indicated on the invoice, all invoices are due upon receipt. Fees stated in the Order Form are exclusive of Taxes. Other than as provided for pursuant to Section 17 (Indemnification), Supplier does not provide credits or refunds for Fees already due or paid. If Customer wishes to increase its Permitted Use of the Software or the Subscription Services, Customer must notify Supplier in advance and pay any applicable Fees.

Any invoice disputes must be initiated by Customer in good faith and in writing; Customer will be entitled to notify Supplier of any invoice dispute by the date that is thirty (30) days following the date of the applicable invoice, after which time the invoice shall be deemed to be accepted by Customer and will be due and payable in full. If Customer initiates a dispute with regard to a particular invoice, any undisputed amounts charged on such invoice will continue to be due and payable. Supplier and Customer agree to use reasonable efforts to address and attempt to resolve any invoice dispute within thirty (30) days after Supplier's receipt of Customer's notice to Supplier regarding such dispute.

With regard to any undisputed invoiced amount that is not paid when due, Supplier reserves the right to charge, and Customer agrees to pay, a late payment fee on the unpaid balance from the due date until paid (whether before or after judgment) equal to the lesser of one and one half percent (1.5%) per month, or the maximum amount allowable by law. If it is determined that Supplier properly charged any amount disputed and withheld by Customer, the late fee will be assessed and paid on the disputed, withheld amount.

Customer acknowledges that Supplier reserves the right to suspend or interrupt Customer's use of the Software or the Subscription Services, cease providing Updates, as applicable, and/or suspend delivery of technical support to Customer for any period during which any Fees due in accordance with the terms of this Agreement remain unpaid for fifteen (15) days after Supplier provides advanced written notice (including by way of email or by way of notice provided via the Software or the Subscription Services) of such unpaid Fees to Customer. In such event, Supplier shall not be precluded from exercising any additional remedies that might be available to it under the terms of this Agreement or otherwise.

In the event of non-payment of the Fees, or a portion thereof, with respect to the Hardware, Customer acknowledges that Supplier may enter upon Customer's premises and without any court order or other process of law may repossess and remove the Hardware, or render the Hardware unusable without removal, either with or without notice to Customer. Customer hereby waives any trespass or right of action for damages by reason of such entry, removal

or disabling. Any such repossession shall not constitute a termination of this Agreement. Supplier will not be responsible for any data which is lost by the Customer as a result of the exercise by Supplier of its rights under this Section 11.

12. **Taxes; Customs**

Customer will be responsible for paying all Taxes (other than taxes associated with Supplier's net income or Supplier's authority to do business in a particular jurisdiction), as well as for obtaining any necessary permissions related to the importation and use of the Software, Third Party Software and/or Hardware. If Supplier has a legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, the appropriate amount shall be computed based on Customer's address listed in the Order Form and invoiced to and paid by Customer, unless Customer provides Supplier with a valid tax exemption certificate authorized by the applicable governmental authority at least five (5) business days prior to the due date of the applicable Supplier invoice. All Fees are payable in full and without reduction or withholding for Taxes. If, for whatever reason, Customer is required by law to withhold any Taxes from Fees, Customer shall gross up its payments to Supplier so that Supplier receives Fees in full and free of any such deductions. Customer shall, upon request of Supplier, provide to Supplier proof that Taxes have been paid, if such payment is not made to Supplier directly. If Supplier pays any costs or expenses incurred in relation to any import duties, customs, formalities, permissions or other requirements, then Customer shall promptly reimburse Supplier for all such amounts in full.

13. **Hardware Purchase**

If Customer so elects, Customer shall purchase Hardware at the price indicated in the Order Form or, if at a later date, at the then-current standard prices in effect at the time the order is placed. All Hardware will be shipped F.O.B. origin. Customer shall be responsible for all Delivery Costs. Payment by Customer of Delivery Costs shall be due and payable upon its receipt of Supplier's invoice.

14. **Title to the Products**

Subject to the second paragraph of this Section 14, with respect to Third Party Software and/or Hardware purchased from Supplier by Customer hereunder (collectively, the "Products"), and in the case of Third Party Software, the media on which such Products are contained and the license thereto, all risk therein shall pass to Customer upon shipment F.O.B. from the manufacturer's facility. Supplier reserves, and Customer hereby grants to Supplier, a security interest in all Products sold under this Agreement to secure payment of all applicable Fees until the applicable Fees have been paid in full. A copy of this Agreement may be filed, or Supplier may apply for any registration, or give any notification, in connection with the security interest, with, to or on appropriate authorities or registers in any jurisdiction at any time before or after execution by Customer including a financing statement in order to perfect and/or register Supplier's security interest in the Products. Customer agrees to execute and deliver any additional document or instrument and provide all other assistance as Supplier may reasonably request from time to time to establish, perfect, register, give effect to and/or enforce Supplier's security interest in the Products applicable in Customer's place of business. Supplier shall not, unless any requirement or obligation cannot be lawfully excluded, be obliged to comply with any requirement or obligation of any law in connection with the security interest, including without limitation giving to Customer any notice of any form or making any disclosure. Customer shall maintain sufficient insurance and shall bear the responsibility of insurance for Products from the time it leaves the manufacturer's facility until the applicable Fees have been paid in full. For greater certainty, Customer acknowledges and agrees that Supplier never sells but only licenses the right to "use" its Software, Documentation, and related materials, and that no sale or other transfer of any title or ownership or any proprietary interest of any kind whatsoever in or to such Software, Documentation, or related materials is contemplated hereunder.

Where the governing law of this Agreement is that of England and Wales, then this second paragraph of Section 14 shall apply in place of the first paragraph of Section 14. The legal and beneficial title to the Products, or in the case of Third Party Software, legal and beneficial title to the media, shall remain vested in Supplier and shall not pass to Customer until the purchase price for such Products has been paid in full and received by Supplier. Until payment in full has been received by Supplier and title to the Products passes: Supplier may require Customer to deliver up to Supplier all Products in its possession and if Customer fails to do so promptly, Supplier shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Products; Supplier and its agents and employees shall be entitled for such purpose at any time and without the need to give notice enter upon any property upon which the Products or any part are stored, or upon which Supplier reasonably believes them to be kept; Customer shall hold the Products as bailee and store or mark the Products in a manner reasonably satisfactory to Supplier indicating that title to the Products remains vested in Supplier; Customer shall take all reasonable care of the Products; and Customer shall insure the Products to their full replacement value, and arrange for Supplier to be noted on the policy of insurance as the loss payee. Irrespective of whether title to the Products remains vested in Supplier, risk in the Products shall pass to Customer upon delivery.

15. **Hardware Maintenance**

If, as indicated on the Order Form, Customer desires, and Supplier agrees to provide, support for Hardware, the following terms and conditions shall apply:

(a) Hardware Configuration. Customer agrees that any Software licensed hereunder will be installed on Hardware compatible with Supplier's current minimum recommended specifications. Such Hardware configuration, as approved by Supplier (the "Hardware Configuration"), is more specifically listed and described in this Order Form. Customer will notify Supplier of any proposed changes to the Hardware Configuration in writing within thirty (30) days thereof. Upon Supplier's written approval of such modification, Customer's notices will constitute addenda hereto. Customer will be responsible for supplying the Hardware and procuring Hardware maintenance as required throughout the term of this Agreement. For the avoidance of doubt, Supplier will not be responsible for Hardware supply or maintenance unless expressly agreed in the Order Form. Supplier will not be responsible for providing technical support of the operating system and/or related configuration.

(b) Hardware Maintenance Services. In the event that Customer wishes to procure maintenance services for Hardware ("Hardware Maintenance Services") from Supplier, Customer must pay the applicable fees to Supplier for such Hardware Maintenance Services as set out in this Order Form, which may be adjusted on an annual basis by Supplier. Hardware Maintenance Services cover the maintenance of the Hardware specified in the Order Form ("Maintained Hardware") on an unscheduled, remedial, as-needed basis, inclusive of parts and labour. Supplier shall have no obligation to provide Hardware Maintenance Services in respect of any other products. Supplier reserves the right to prioritize all maintenance requests and calls in its sole judgment and discretion. Supplier shall have no obligation to provide Hardware Maintenance Services other than during the hours indicated in the Order Form. Supplier does not guarantee maintenance availability at certain times or within certain response times. Customer shall ensure that Supplier's personnel shall have free access to the Hardware as required in order to complete the Hardware Maintenance Services.

(c) Not Covered by Hardware Maintenance. Supplier shall have no obligation to provide Hardware Maintenance Services in respect of any Hardware modified by Customer or some other third party without Supplier's express prior written approval. Supplier will not be responsible for, and the Hardware Maintenance Services shall not cover, the repair of damage resulting from, or furnishing parts required as a result of, causes other than ordinary wear and tear, including, without limitation, neglect, misuse (including faulty repair or maintenance by unauthorized parties), accidents, vandalism, failure of electrical power, air conditioning, humidity control, or acts of God. Customer agrees that Supplier will not be responsible for the installation specifications (including cabling, power, space, etc.), or the installation, operation, maintenance or technical support of the Hardware unless expressly agreed in writing between Supplier and Customer. Service for older Hardware subject to Hardware Maintenance Services under this Agreement may be subject to availability of parts. In the event of non-availability of parts for particular equipment, or in the event that parts for such equipment are rare to the point that they cannot be procured on a commercial basis, replacement equipment will be offered to the Customer at a preferential price. Hardware Maintenance Services do not cover the provision or repair of electrical power supply, cabling or network issues.

16. **Confidentiality**

By virtue of this Agreement, the parties may have access to the other party's Confidential Information. The parties will hold each other's Confidential Information in confidence. With respect to all Confidential Information other than Software and Documentation provided by Supplier, such obligation shall terminate three (3) years after termination of this Agreement. With respect to the Software and Documentation provided by Supplier, such obligation is perpetual. The parties will not make each other's Confidential Information available in any form to any third-party for any purpose except to the extent necessary to exercise its rights under this Agreement and will treat Confidential Information of the other party with the same degree of care with which it would treat its own confidential information of a like nature, and in no case less than a reasonable degree of care. The parties agree that the limitations of liability contained herein shall not apply to any disclosure of Software or Documentation in breach of this provision and that any such breach shall terminate the rights to such Software and Documentation granted to Customer under this Agreement.

Confidential Information may only be disclosed to those employees or agents who are required to access it in furtherance of this Agreement and who are required to protect such Confidential Information against unauthorized disclosure. Supplier and Customer shall each implement and enforce policies and contractual obligations with its employees, agents and subcontractors to ensure its employees, agents and subcontractors protect the Confidential Information as required pursuant to this Section 16. It shall not be a breach of this Section 16 if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided that the party served with such process promptly notifies, to the extent legally permissible, the other party and provides reasonable assistance

so that the other party may seek, at its own cost and expense, a protective order against public disclosure.

The parties recognize and agree that monetary damages are an inadequate remedy for breach of the obligations set forth in this Section 16 and further recognize that any breach would result in irreparable harm to the non-breaching party. In the event of such a breach, the non-breaching party may seek injunctive relief from a court of competent jurisdiction to pursue those remedies available to it.

## 17. Indemnification

Supplier will indemnify, defend and hold Customer Indemnified Parties harmless from, at its expense, any action brought against Customer Indemnified Parties by a third party based upon a claim that Customer's use of the Software within the scope of these Terms and Conditions and the Order Form(s) infringes a United States, Canadian, United Kingdom, European Union, Australian or New Zealand patent or copyright issued to or held by a third party, or misappropriates a trade secret of such third party; provided that Customer notifies Supplier promptly in writing of such claim, provides Supplier with the sole control and authority to defend or settle such action or claim, and gives Supplier the authority, information and assistance necessary to settle or defend such claim.

In the event a claim of infringement is made, or Supplier believes that such a claim is likely to be made, then Supplier shall at its expense: (a) procure the right for Customer to continue using the Software; (b) replace or modify the Software so that it becomes non-infringing, without materially decreasing the functionality of the Software; or (c) if neither (a) or (b) above is commercially practical, then at Supplier's sole option, terminate this Agreement upon three (3) months written notice, and either issue to Customer a credit equal to, or promptly refund to Customer, the initial license fee in respect of the Software.

Notwithstanding the foregoing, Supplier shall have no obligation to defend Customer or to pay any costs or legal fees for any action, claim or settlement, based upon: (a) use of a version of the Software that was not, at the time that the claim arose, the current unaltered version of the Software provided by Supplier hereunder, including, without limitation, failure of Customer to install Updates containing modifications to make the Software non-infringing; (b) combination, operation, integration or interfacing of the Software with Third Party Materials, other than Third Party Materials or Third Party Software with which the Software was intended to operate as specified in the Documentation associated with the Software if such claim would not have arisen but for such combination, operation, integration or interfacing (regardless of whether or not Supplier has advised Customer that such use would likely result in a claim of infringement by a third party); (c) use of the Software in a manner other than as authorized by the Documentation, the Order Form(s) or these Terms and Conditions; (d) Supplier's compliance with the designs, plans, or specifications furnished by or on behalf of Customer; (e) modifications to the Software by any person other than Supplier or its authorized agents or subcontractors; or (f) Customer's failure to accept any procured right to continue using the Software.

THE FOREGOING STATES SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER INDEMNIFIED PARTIES WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.

Customer shall defend, indemnify and hold harmless Supplier Indemnified Parties from and against any and all third party claims, actions, causes of action, liabilities, damages, costs and expenses, including reasonable legal fees, arising from or related to the exclusions (a) through (f) set out in the third paragraph of this Section 17.

## 18. Warranties; Disclaimer of Warranties

For a period of ninety (90) days after the Go-Live Date, Supplier warrants that the Software will operate substantially in accordance with the specifications set forth in the Documentation, provided that the Software is used on the computer hardware equipment and with third party software programs which meet Supplier's minimum requirements as set forth in the Order Form(s) or exhibit, as applicable. Customer's exclusive remedy and Supplier's sole liability for breach of this warranty shall be for Supplier to use commercially reasonable efforts to modify the Software so that it conforms to the warranty described above. Without limitation, Supplier shall have no liability to Customer or any third party arising out of Customer's failure to back-up the Software and the related data.

Supplier hereby represents that it has the authority of each manufacturer or producer of Hardware and Third Party Software which are, if applicable, subject to this Agreement to sell the same to Customer. Customer acknowledges that Supplier is not the manufacturer or producer and therefore makes no warranties, conditions, representations or guarantees, express or implied, concerning Hardware or Third Party Software, as applicable. So far as possible, Supplier hereby assigns to Customer the manufacturer's and producer's warranties, if any, applicable to the Hardware and Third Party Software, and Customer hereby accepts such assignment and agrees that its sole remedies are included thereunder. Supplier makes no representations regarding the validity or enforceability of any such manufacturer's or producer's warranty.

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS SECTION 18 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, THIRD PARTY SOFTWARE AND HARDWARE, AS APPLICABLE, ARE PROVIDED "AS IS" AND "WITH ALL FAULTS", AND

SUPPLIER DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY AND CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR THE USE OF REASONABLE SKILL AND CARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUPPLIER MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE USE OF REASONABLE SKILL AND CARE, NON-INFRINGEMENT, SATISFACTORY QUALITY, ACCURACY, FREEDOM FROM ERROR OR THAT THE SOFTWARE, THIRD PARTY SOFTWARE, SUPPORT, MAINTENANCE OR HARDWARE WILL MEET ALL OF CUSTOMER'S REQUIREMENTS. SUPPLIER MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY SOFTWARE OR THIRD PARTY SERVICES PROVIDED WITH OR AS PART OF THE SOFTWARE, HARDWARE OR RELATED SERVICES. SUPPLIER'S LIMITED WARRANTIES DO NOT APPLY TO ANY SOFTWARE WHICH HAS BEEN MODIFIED OR ALTERED IN ANY MANNER BY ANYONE OTHER THAN SUPPLIER OR ITS AUTHORIZED AGENT. SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN OR ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. IN THAT EVENT, SUCH WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS ARE LIMITED IN DURATION TO THE WARRANTY PERIOD TO THE EXTENT LEGALLY PERMISSIBLE.

Nothing in this Agreement excludes, restricts, or modifies any right or remedy, or any guarantee, representation, warranty, condition or other term, implied or imposed by any applicable law which cannot lawfully be excluded or limited. This may include any consumer law which contains guarantees that protect the purchasers of goods and services in certain circumstances. If any guarantee, representation, warranty, condition or other term is implied or imposed concerning this Agreement under any consumer law or any other applicable law and cannot be excluded (a "Non-Excludable Provision"), and Supplier is able to limit Customer's remedy for a breach of the Non-Excludable Provision, then the liability of Supplier for breach of the Non-Excludable Provision is limited to one or more of the following, at Supplier's option: (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

The parties agree that it is Customer's responsibility to determine whether the Software is suitable for Customer's requirements. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of this Agreement or have any legal effect whatsoever.

## 19. Limitation of Liability

EXCEPT FOR LIABILITY ARISING (i) FROM CUSTOMER'S BREACH OF SECTION 2 (LICENSE RESTRICTIONS) AND ANY DISCLOSURE BY CUSTOMER OF SOFTWARE OR DOCUMENTATION IN BREACH OF SECTION 16 (CONFIDENTIALITY), (ii) UNDER SECTION 17 (INDEMNIFICATION) OR (iii) FOR PERSONAL INJURY, DEATH, FRAUD OR FRAUDULENT MISREPRESENTATION:

(A) SUPPLIER'S ENTIRE LIABILITY UNDER THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, THE THIRD PARTY SOFTWARE, THE HARDWARE OR ANY RELATED SERVICES WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO SUPPLIER PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM; AND

(B) NEITHER PARTY WILL BE LIABLE FOR:

(i) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, THE THIRD PARTY SOFTWARE, THE HARDWARE OR ANY RELATED SERVICES; OR

(ii) ANY LOSS OF REVENUE, PROFITS, GOODWILL OR DATA, OR DATA USE (INCLUDING AS A RESULT OF A VIRUS), BUSINESS INTERRUPTION, FAILURE TO REALIZE AN EXPECTED SAVING, CORRUPTION OF DATA, OR CLAIMS AGAINST THEM BY ANY THIRD PARTY,

EVEN IF THE PARTIES ARE ADVISED, OR MAY REASONABLY SUPPOSED TO HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

SUCH LIMITATIONS WILL APPLY REGARDLESS OF HOW THE CLAIM ARISES, WHETHER ARISING BASED ON CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE AND WILL APPLY TO ALL ORDER FORMS, SCHEDULES, ADDENDA, AGREEMENTS AND ATTACHMENTS RELATED TO THIS AGREEMENT.

THE FOREGOING LIMITATIONS OF LIABILITY ALLOCATE THE RISKS BETWEEN SUPPLIER AND CUSTOMER AND FORM A MATERIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. SUPPLIER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

## 20. Term and Termination

(a) Term. The license granted by this Agreement is effective until terminated.

(b) Failure to Pay Maintenance Program Fee. Customer acknowledges that it will not have access to the Maintenance Program if it does not pay the Maintenance Program Fee. Supplier will invoice Customer in respect of the Maintenance Program Fee annually

in advance. If Customer does not pay the Maintenance Program Fee invoice in accordance with Section 11 (Payment Terms), Customer acknowledges that Supplier has the right to suspend Customer's access to the Maintenance Program as set out in Section 7. Customer acknowledges that, in the event that Customer wishes to re-activate its account after access to the Maintenance Program has been suspended, Supplier has the right to charge Customer a fee in respect of such reactivation.

(c) <u>Termination by Supplier</u>. Supplier has the right to terminate the license granted under this Agreement if Customer is in default of any term or condition of this Agreement, and fails to cure such default within thirty (30) days after receipt of written notice of such default. Without limitation, it will be deemed a Customer default under this Agreement if Customer fails to pay any initial license fees or related initial training fees due hereunder. Supplier may terminate this Agreement immediately if: (i) Customer breaches Section 2 (License Restrictions); or (ii) Customer becomes insolvent, a receiver, administrator, controller or a liquidator is appointed to Customer, Customer assigns any of its property for the benefit of creditors or any class of them or any proceedings have been commenced by or against Customer under any bankruptcy, insolvency or similar laws.

(d) <u>Termination by Customer</u>. Customer has the right to terminate this Agreement if Supplier is in default of any term or condition herein, and fails to cure such default within thirty (30) days after receipt of written notice of such default or if Supplier becomes insolvent or any proceedings are to be commenced by or against Supplier under any bankruptcy, insolvency or similar laws.

(e) <u>Effect of Termination</u>. Upon termination of this Agreement for any reason, any and all amounts owed to Supplier pursuant to this Agreement will be immediately due and payable, and all license rights granted to Customer hereunder will be immediately revoked and terminated. Following the termination of this Agreement, the Sections titled "Ownership of Intellectual Property; Customer Input," "Payment Terms," "Taxes; Customs," "Confidentiality," "Indemnification," "Warranties; Disclaimer of Warranties," "Limitation of Liability," "Audit," "Governing Law" and "General" will continue in full force and effect in accordance with their terms. Within ten (10) days following termination, Customer will cease using and will securely destroy or return to Supplier all copies of the Software, Documentation and any applicable copies thereof in accordance with Section 3 (Ownership of Intellectual Property; Customer Input; Data) and confirm the same to Supplier in writing by a duly authorized officer.

21. **Audit**

During the Term, Customer shall maintain complete and accurate books, records, policies, and procedures (collectively "Books and Records") sufficient to confirm Customer's compliance with these Terms and Conditions and the Order Form(s), including without limitation compliance with Permitted Use, and payment of Fees to Supplier. During the Term and for a period of one (1) year thereafter, Customer shall permit Supplier (or an independent representative engaged by Supplier), upon thirty (30) days prior written notice, to audit (each an "Audit") Customer's Books and Records and deployment of the Software to the extent reasonably necessary to verify Customer's compliance with the terms, conditions, and restrictions of this Agreement, at such times during Customer's regular business hours as Supplier may reasonably request. Supplier may exercise its right to audit no more frequently than one (1) time each calendar year. If any Audit should disclose any underpayment of Fees, Customer shall promptly pay Supplier such underpaid amount (whether before or after judgment), together with interest thereon at a rate of one and one-half percent (1.5%) per month during which each such amount was owed and unpaid, or the highest interest rate allowed by law, whichever is lower. If the amount of such underpayment exceeds five percent (5%) of amounts otherwise payable, then Customer shall reimburse Supplier for Supplier's reasonable and customary audit expenses. The rights and obligations set forth in this Section 21 shall survive termination or expiration of the Term (as such term is defined in Section 20(a)) for a period of one (1) year from such termination or expiration.

22. **Assignment**

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all schedules and Order Forms), without the other party's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement with immediate effect upon written notice. Any purported assignment in violation of this section shall be void and of no effect. Any permitted assignee shall assume all assigned obligations of its assignor under the Agreement.

23. **Governing Law**

The law that will apply to any question of interpretation regarding this Agreement, any question of the existence of this Agreement, or a lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such lawsuit, depend on the country of incorporation or organization, as applicable, of Customer, and will be determined as follows:

| Customer Country of Incorporation: | Governing Law: | Courts Having Jurisdiction: |
|---|---|---|
| The United States of America, Mexico or a Country in Central or South America or the Caribbean | The laws of the State of New York and the federal laws of the United States applicable in that state. | (a) The United States District Court for the Southern District of New York (to the extent it has subject matter jurisdiction), or (b) the Commercial Division of the Supreme Court of the State of New York in New York County (or, if such court lacks subject matter jurisdiction, in the courts of the State of New York in New York County) |
| Canada | The laws of the Province of Ontario and the laws of Canada applicable in that province. | Toronto, Ontario |
| The United Kingdom or Another Country in Europe, the Middle East or Africa | The laws of England and Wales. | England and Wales |
| Australia or a Country in Asia or the Pacific Region | The laws of the State of New South Wales and the laws of the Commonwealth of Australia applicable in that state. | Sydney, Australia |

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and, subject to the availability of injunctive relief pursuant to Section 16 (Confidentiality) and to Section 24 (Dispute Resolution), to the jurisdiction of the applicable courts above. The parties exclude the operation of the United Nations Convention on Contracts for the International Sale of Goods.

### 24. Dispute Resolution

Upon any dispute, controversy or claim between the parties, each of the parties will designate a representative from senior management to attempt to resolve such dispute. The designated representatives will negotiate in good faith in an effort to resolve the dispute over a period of thirty (30) days. If the dispute is not resolved in this thirty (30) day period, a party may submit the dispute to binding arbitration. Customer shall select an arbitrator from a list of three (3) arbitrators to be provided by Supplier to Customer, each of which shall be skilled in the legal and business aspects of the software industry. The parties agree that the arbitrator's fee shall be shared equally between the parties and that each party shall be responsible for its costs, legal and otherwise, in relation to the arbitration, unless the arbitrator decides that the circumstances justify an award of costs. The arbitration shall be conducted in the English language and shall take place in accordance with arbitration rules and in the location set forth in the below chart, depending on the country of incorporation or organization, as applicable, of Customer:

| Customer Country of Incorporation: | Applicable Arbitration Rules: | Location of Arbitration: |
|---|---|---|
| The United States of America, Mexico or a Country in Central or South America or the Caribbean | Commercial Arbitration Rules of the American Arbitration Association | New York City, New York |
| Canada | Canadian Arbitration Association | Toronto, Ontario |
| The United Kingdom or Another Country in Europe, the Middle East or Africa | London Court of International Arbitration | London, England |
| Australia or a Country in Asia or the Pacific Region | Australian Centre for Commercial Arbitration | Sydney, Australia |

The foregoing provision shall not limit the ability of a party to seek injunctive relief.

### 25. General.

(a) Export Compliance. The Software, Products and related services, and derivatives thereof may be subject to export laws and regulations. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit access or use of the Software or Products in a U.S.-embargoed country, EU-embargoed country, or United Nations-embargoed country or in violation of any other applicable embargo, export law or regulation.

(b) Anti-Corruption. Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Supplier's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Supplier.

(c) Modifications. This Agreement may not be modified except in writing signed by both parties.

(d) Subcontractors. Supplier reserves the right to make use of subcontractors to provide services and to use such means as Supplier, in its sole discretion, considers appropriate. Supplier's use of subcontractors shall not relieve it of its obligations under this Agreement.

(e) Independent Contractor. The relationship of the parties established by this Agreement is that of independent contractors. This Agreement does not establish an agency, joint venture or partnership relationship between Supplier and Customer. Supplier and its personnel, agents, Suppliers, and Supplier's Authorized Representatives, are acting as independent contractors and not as employees or agents of Customer. Nothing in this Agreement will be construed to permit either party to bind the other or to enter into obligations on behalf of the other party.

(f) Non-Solicitation. During the Term of this Agreement and for a period of one (1) year following the termination of this Agreement, each party hereto agrees not to solicit, recruit or employ any employee of the other party without the prior written consent of the Chief Executive Officer, President or Director of the other party. For purposes of this section, the term "employee," shall include any person with such status at any time during the six (6) months preceding any solicitation in question. For the avoidance of doubt, the foregoing restriction shall not apply to the following forms of solicitation (and resulting employment): (i) a party using general bona fide solicitations directed at the public or industry participation in general in publications or internet resources not specifically targeted at employees of the other party, or employing any person who responds to such solicitations; (ii) using search firms, or hiring any persons solicited by such search firms, so long as such firms are not advised by a party to solicit employees of the other party; or (iii) soliciting any person who has left the employment of the other party prior to the date of this Agreement.

(g) Severability. If any provision contained herein or part thereof is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, such invalid provision or part thereof shall be deemed not to affect or impair the validity or enforceability of any other provision or part thereof contained herein, all of which remaining provisions or parts thereof shall be and remain in full force and effect.

(h) Headings. The headings and subheadings contained herein are inserted for convenience of reference only and shall in no way be construed to be interpretations of terms.

(i) Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after being sent by pre-paid recorded post; or (iii) the second business day after sending by facsimile with telephonic confirmation of receipt. Notices to Supplier shall be sent to the address shown in the introductory paragraph of this Agreement addressed to Supplier's signatory of this Agreement. Notices to Customer shall be sent to the address shown in the introductory paragraph of this Agreement addressed to Customer's signatory of this Agreement. Each party may modify its recipient of notices by providing notice pursuant to this Agreement.

(j) Waiver. No delay by either party in enforcing any of the terms or conditions of this Agreement will affect or restrict such party's rights and powers arising under this Agreement. No waiver of any term or condition of this Agreement will be effective unless made in writing. The waiver by any party of a breach of this Agreement does not constitute a waiver of a repeat of the same breach or of other breach of rights or obligations under this Agreement.

(k) Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement and supersedes all proposals, oral and written, and all previous negotiations and communications between the parties and their representatives with respect to the subject matter of this Agreement. For greater certainty, this Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if Supplier accepts or does not otherwise reject the purchase order. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

(l) Third party rights. A person who is not a party to this Agreement shall not have any rights to enforce any term of this Agreement.

(m) Force Majeure. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control provided that the party affected by such failure or delay gives the other party prompt written notice of the cause and uses commercially reasonable efforts to correct such failure or delay within a reasonable period of time.

(n) Counterparts. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a Portable Document Format (PDF), or by using a web-based e-signature platform such as Docusign or Echosign, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page or e-signature was an original thereof.

26. **Definitions and Interpretation.**

The definitions and rules of interpretation in this Section shall apply to this Agreement.

(a) The following capitalized terms shall have the meanings ascribed to them in this section:

| | |
|---|---|
| "**Affiliate**" | Includes any entity or association controlled by, controlling or under common control with a party and for the purposes of this definition, the term "control" shall mean (i) the ownership of more than fifty percent (50%) of the voting shares of the subject entity or association; (ii) the right or power, directly or indirectly, to elect or remove directors; or (iii) the right or power to control management. |
| "**Audit**" | Has the meaning set out in Section 21. |
| "**Branding**" | Has the meaning set out in Section 4. |
| "**Books and Records**" | Has the meaning set out in Section 21. |
| "**Confidential Information**" | All tangible or intangible information and materials, in any form or medium, including, but not limited to, all of the following, whether or not patentable: information that is clearly designated or identified as confidential by appropriate letter or by a proprietary stamp or legend; all information disclosed orally or visually, or other form of tangible information without an appropriate letter or a proprietary stamp or legend, if it would be apparent to a reasonable person familiar with the party's business and industry in which it operates, that such information is of a confidential nature; Software and the Documentation; documentation and other information related to hardware specifications, components lists, suppliers and the like; any scientific or technical design, drawing, process, technique or procedure; trade secrets; information related to business plans, forecasts, sales and marketing plans, Customers, pricing and finances; Customer data contained in the Software databases; the conduct of the other party in performing this Agreement; and the terms and conditions of this Agreement. Confidential Information will not include information that: (i) is or becomes generally known to the public through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third-party without restriction on disclosure; or (iv) is independently developed by or for the other party without use of or reference to the other party's Confidential Information, as evidenced by files from the time of such independent development. |
| "**Customer Indemnified Parties**" | Customer and its Affiliates and any of their respective officers, directors, employees, agents, successors and permitted assigns. |
| "**Customer Input**" | Suggestions, enhancement requests, recommendations or other feedback provided by Customer, its employees, contractors and agents relating to the operation or functionality of the Software. |
| "**Customer Sites**" | The physical location or address where Customer utilizes the Software for the Permitted Use, as set out on the applicable Order Form(s). |
| "**Delivery Costs**" | Costs related to the delivery of Hardware or Third Party Software, including insurance, packaging, shipping, freight and other delivery-related costs. |
| "**Documentation**" | Supplier-supplied related hard-copy or electronically reproducible technical and user documents associated and provided with the Software. |
| "**Error**" | Reproducible error of the Software which prevents the use of the Software substantially as described in the specifications set forth in the Documentation. |
| "**Fees**" | License fees, implementation and training fees, Maintenance Program Fees, amounts payable in respect of Hardware and all other fees due hereunder. |
| "**Go-Live Date**" | The date on which Customer first uses the Software to process its daily business relative to the functions that the Software automates. |
| "**Hardware**" | Hardware products produced by third party manufacturers which Supplier buys from such manufacturers or distributors for resale to its Customers (to the extent available), including, but not limited computer hardware and point of sale devices. |
| "**Maintenance Program**" | The technical support and Updates provided by Supplier in respect of the Software in consideration of the payment by Customer of the Maintenance Program Fee. |
| "**Maintenance Program Fee**" | The annual fee that Customer is required to pay to Supplier in order to benefit from the Maintenance Program. |
| "**New Product**" | Any new feature, module or enhancement to the Software that Supplier markets and licenses for additional fees separately from Updates. |
| "**Order Form**" | A separate document provided by Supplier, agreed to by the parties to, and governed by, this Agreement, by which Customer orders licenses and services. Additional Order Forms executed by the parties with respect to additional licenses, Products and services will form part of this Agreement. |
| "**Other Assistance**" | Has the meaning set out in Section 7. |
| "**Permitted Use**" | The quantity or extent of a license to the Software or particular modules thereof, as specified in the Order Form. The Order Form may specify that the license is measured by number of Users, number of Workstations or limited to specific Customer Sites. |
| "**Products**" | Has the meaning set out in Section 14. |

| | |
|---|---|
| "**Software**" | The (i) machine-readable instructions and data, (ii) components, files, and modules, (iii) audio-visual content (such as images, text, recordings or pictures) and (iv) related licensed materials, such as activation keys, as applicable, as further described in the Order Form(s), as well as any Updates. |
| "**Supplier Indemnified Parties**" | Supplier and its Affiliates and any of their respective officers, directors, employees, agents, successors and permitted assigns. |
| "**Supplier Authorized Representatives**" | Supplier's authorized representatives who, by written authorization from Supplier, may have authorization to sell, install, or provide training in respect of the Software. |
| "**Taxes**" | Any local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added taxes, excise, use, goods and services taxes, consumption taxes or similar taxes, export and import fees, customs duties and similar charges, in each case, associated with the Software, Third Party Software and/or Hardware, imposed upon the Fees or otherwise arising out of, or in connection with, the transactions contemplated by this Agreement. |
| "**Term**" | Has the meaning set out in Section 20(a). |
| "**Third Party Materials**" | Any software, hardware, data, or other materials or products not provided by Supplier. |
| "**Third Party Software**" | Software owned by third party producers which Supplier distributes or resells to its Customers. |
| "**Updates**" | The latest updates, modifications, improvements to the Software, including corrections of Errors, which relate to the operating performance but do not change the basic functionality of the Software. |
| "**User**" | A person or machine that utilizes the Software for the Permitted Use, as authorized pursuant to an Order Form, as applicable. |
| "**Workstation**" | A personal computer or device providing equivalent functionality which is capable of executing the Software and which is linked to a computer network from which the Software is accessible, as authorized pursuant to an Order Form, as applicable. |

(b)     Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

(c)     Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

(d)     A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

(e)     Any words following the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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