

Software End User License Agreement

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THE TERMS OF THIS AGREEMENT WILL SUPERSEDE AND GOVERN THE RELATIONSHIP BETWEEN LICENSEE AND LICENSOR, AND ALL OTHER TERMS PROVIDED BY LICENSEE, WHETHER IN A PURCHASE ORDER, REQUEST FOR PROPOSAL, OR OTHER DOCUMENT ARE HEREBY REJECTED.

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

“**Authorized Users**” means solely those individuals employed by Licensee and authorized to use the Software pursuant to the license granted under this Agreement, as set forth on the Quotation.

“**Documentation**” means Licensor’s user manuals, handbooks, and installation guides relating to the Software provided by Licensor to Licensee either electronically or in hard copy form.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Fees**” means the fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under this Agreement.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“**Quotation**” means the sales document provided by Licensor to Licensee which constitutes an offer to sell and license to Licensee, and accepted by Licensee, for Licensee’s purchase of the license for the Software granted under this Agreement.

“**Software**” means the product described in the Quotation in object code format, including any Updates provided to Licensee pursuant to this Agreement.

“**Third Party**” means any Person other than Licensee or Licensor.

“**Updates**” means any updates, bug fixes, patches, or other error corrections to the Software that Licensor generally makes available free of charge to current licensees of the Software.

For purposes of this Agreement, (a) the words “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Annexes, Schedules, and Exhibits refer to the Sections of, and Annexes, Schedules, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Quotation and all Annexes, Schedules, and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

2. License Grant and Scope. Subject to and conditioned upon Licensee’s payment of the Fees and Licensee’s compliance with all terms and conditions set forth in this Agreement, Licensor hereby grants Licensee a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 16(e)), license, during the Term and solely by and through its Authorized Users, to:

(a) Download and install the Software in accordance with the Documentation. In addition to the foregoing, Licensee has the right to make one copy of the Software solely for backup purposes, provided that Licensee shall not allow any Person to, install or use any such copy. All copies of the Software made by the Licensee:

- (i) will be the exclusive property of the Licensor;
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- (iii) must include all trademark, copyright, patent, and other Intellectual Property Rights notices contained in the original.

(b) Use and run the Software as properly installed in accordance with this Agreement and the Documentation, solely as set forth in the Documentation and solely for Licensee’s business purposes.

(c) Download or otherwise make copies of the Documentation and use such Documentation, solely in support of its licensed use of the Software in accordance herewith. All copies of the Documentation made by Licensee:

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- (ii) will be subject to the terms and conditions of this Agreement; and
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(d) If the Software was obtained for academic or research use by a student or educational institution, it may be used for teaching and research purposes only. Commercial use of the Software is prohibited if the software was intended for educational use.

3. Third Party Materials. The Software may include software, content, data, or other materials, including related documentation, that are owned by Persons other than Licensor and that are provided to Licensee on licensee terms that are in addition to and/or different from those contained in this Agreement (“**Third Party Licenses**”). A list of all materials, if any, included in the Software and provided under Third Party Licenses is set forth on Licensor’s website and updated from time to time, said updates to be binding upon publication on

Licensor's website. Licensee is bound by and shall comply with all Third Party Licenses. Any breach by Licensee or any of its Authorized Users of any Third Party license is also a breach of this Agreement.

4. Use Restrictions. Licensee shall not, and shall require its Authorized Users not to, directly or indirectly:

(a) use (including make any copies of) the Software or Documentation beyond the scope of the license granted under Section 2 and use the number of simultaneous licenses indicated on the Quotation;

(b) provide any other Person, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, with access to or use of the Software or Documentation unless Licensee is responsible for the foregoing parties in accordance with Section 5 and such subcontractor, independent contractor, affiliate, or service provider: (i) uses the Software or Documentation solely for the benefit of Licensee; and (ii) is subject to the terms and conditions herein;

(c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;

(d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

(e) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

(f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;

(g) except as expressly set forth in Section 2(a) and Section 2(c), copy the Software or Documentation, in whole or in part;

(h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;

(i) use the Software or Documentation in violation of any law, regulation, or rule; or

(j) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Licensor's commercial disadvantage.

5. Responsibility for Use of Software. Licensee is responsible and liable for all uses of the Software and Documentation through access thereto provided by Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement. Licensee shall make all Authorized Users aware of the terms set forth herein, and shall advise each Authorized User of the binding nature of these terms.

6. Term and Termination.

(a) This Agreement and the license granted hereunder shall remain in effect for the term set forth on the Quotation or until earlier terminated as set forth herein (the “**Term**”).

(b) Either party may terminate this Agreement, effective upon written notice to the defaulting party, if the defaulting party, materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 15 business days after Licensor provides written notice thereof.

(c) Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

(d) Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee’s obligation to pay all Licensee Fees and Support Fees that may have become due before such expiration or termination, or entitle Licensee to any refund, in each case except as set forth in 12.1(c)(ii).

7. Maintenance and Support.

(a) Maintenance and support services will include provision of Updates and support for current (non-expired) subscription licenses and perpetual licenses with active (non-expired) maintenance subscriptions (as set forth in the Quotation). Support services provided by Licensor will include reasonable telephone, e-mail or web-based support. Licensor reserves the right to condition the provision of maintenance and support services, including all or any Updates, on Licensee’s registration of the copy of Software for which support is requested. Licensor has no obligation to provide maintenance and support services, including Updates: (i) for any but the most current version or release of the Software; (ii) for any copy of Software for which all previously issued Updates have not been installed; (iii) if Licensee is in breach under this Agreement; or (iv) for any Software that has been modified other than by Licensor, or that is being used with any hardware, software, configuration, or operating system not specified in the Documentation.

(b) Licensor may develop and provide Updates at its sole discretion. Licensee further agrees that all Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Licensee acknowledges that Licensor may provide some or all Updates via download from a website designated by Licensor and that Licensee's receipt thereof will require an internet connection, which connection is Licensee's sole responsibility. Licensor has no obligation to provide Updates via any other media. Maintenance and support services do not include any new version or new release of the Software that Licensor may issue as a separate or new product, and Licensor may determine whether any issuance qualifies as a new version, new release, or Update in its sole discretion.

8. Collection and Use of Information.

(a) Licensee acknowledges that Licensor may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, through:

- (i) the provision of maintenance and support services; and
- (ii) security measures included in the Software as described in Section 10.

(b) Licensee agrees that the Licensor may use such information for any purpose related to any use of the Software by Licensee or on Licensee’s equipment, including but not limited to:

- (i) improving the performance of the Software or developing Updates; and
- (ii) verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software.

9. Intellectual Property Rights. Licensee acknowledges and agrees that the Software and Documentation are provided under license, and not sold, to Licensee. Licensee does not acquire any ownership interest in the Software or Documentation under this Agreement, or any other rights thereto, other than to use the same in accordance with the license granted and subject to all terms, conditions, and restrictions under this Agreement. Licensor and its licensors and service providers reserve and shall retain their entire right, title, and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software, except as expressly granted to the Licensee in this Agreement. Licensee shall safeguard all Software (including all copies thereof) from infringement, disclosure to third parties, misappropriation, theft, misuse, or unauthorized access. Licensee shall promptly notify Licensor if Licensee becomes aware of any infringement of the Licensor's Intellectual Property Rights in the Software and fully cooperate with Licensor, at Licensor's sole expense, in any legal action taken by Licensor to enforce its Intellectual Property Rights.

10. Compliance Measures.

(a) The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under Section 4. Licensee shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

(b) During the Term, Licensor may, in Licensor's sole discretion, audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement, provided that (i) any such audit shall be conducted not less than 15 business days prior notice to Licensee, and (ii) no more than one audit may be conducted in any 12 month period except for good cause shown. Licensor also may, in its sole discretion, audit Licensee's systems within 6 months after the end of the Term to ensure Licensee has ceased use of the Software and removed all copies of the Software from such systems as required hereunder. The Licensee shall fully cooperate with Licensor's personnel conducting such audits and provide all access requested by the Licensor to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information. Licensor shall only examine information directly related to the Licensee's use of the Software. Licensor may conduct audits only during Licensee's normal business hours and in a manner that does not unreasonably interfere with the Licensee's business operations.

(c) If any of the measures taken or implemented under this Section 10 determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then:

(i) Licensee shall, within 15 business days following the date of such determination by Licensee or Licensor's written notification thereof, pay to Licensor the retroactive Fees for such excess use and, unless Licensor terminates this Agreement pursuant to Section 10.1(c)(ii), obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement. In determining the Licensee Fee payable pursuant to the foregoing, (x) unless Licensee can demonstrate otherwise by documentary evidence, all excess use of the Software shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by Licensor hereunder, and continued uninterrupted thereafter, and (y) the rates for such licenses shall be determined without regard to any discount to which Licensee may have been entitled had such use been properly licensed prior to its commencement (or deemed commencement).

(ii) If the use exceeds or exceeded the use permitted by this Agreement, Licensor shall also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.

Licensor's remedies set forth in this Section 10(c) are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

11. Payment. The payment of all Fees set forth in the Quotation are non-refundable, except as may be expressly set forth herein. Any renewal of the license or maintenance and support services hereunder shall not be effective until the fees for such renewal have been paid in full. Any payment overdue will be subject to interest charges which shall accrue at a rate of 1.5% per month (18% annually), or the maximum rate permitted by law, whichever is less, from the due date until the total invoice amount has been paid in full. Further, if Licensee fails to timely pay the fee, Licensor may terminate ongoing access to the products and/or services listed in the accompanying Quotation. Licensee shall be liable to Licensor for any costs incurred in Licensor's pursuit of payment for unpaid fees, including reasonable attorney fees and court costs (which shall include the costs of appeal or of executing under any judgment).

12. Limited Warranties, Exclusive Remedy, and Disclaimer.

(a) Solely with respect to Software for which Licensor receives a License Fee, Licensor warrants that, for a period of 90 days following the "start date" date set forth on the Quotation, the Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith. The foregoing warranty does not apply, and Licensor strictly disclaims all warranties, with respect to any Third Party materials.

THE FOREGOING WARRANTY DOES NOT APPLY, AND LICENSOR STRICTLY
DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD PARTY MATERIALS.

(b) The warranty set forth in Section 12(a) will not apply and will become null and void if Licensee materially breaches any provision of this Agreement, or if Licensee, any Authorized User, or any other Person provided access to the Software by Licensee or any Authorized User, whether or not in violation of this Agreement:

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(ii) modifies or damages the Software, or the media on which it is provided, including abnormal physical or electrical stress; or

(iii) misuses the Software, including any use of the Software other than as specified in the Documentation.

(c) If, during the period specified in Section 12(a), any Software covered by the warranty set forth in such Section fails to perform substantially in accordance with the Documentation, and such failure is not excluded from warranty pursuant to Section 12(b), Licensor will, subject to Licensee's promptly notifying Licensor in writing of such failure, at its sole option, either:

(i) repair or replace the Software, provided that Licensee provides Licensor with all information Licensor requests to resolve the reported failure, including sufficient information to enable the Licensor to recreate such failure; or

(ii) refund the Fees paid for such Software, subject to Licensee's ceasing all use of and, if requested by Licensor, returning to Licensor all copies of the Software.

If Licensor repairs or replaces the Software, the warranty will continue to run from the initial "start date" specified on the Quotation, and not from Licensee's receipt of the repair or replacement.

The remedies set forth in this Section 12(c) are Licensee's sole remedies and Licensor's sole liability under this Agreement.

(d) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 12(a), THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESSED, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

(i)

LAW: 13. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE

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(b) IN NO EVENT WILL LICENSOR'S OR ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR PURSUANT TO THIS AGREEMENT FOR UP TO TWELVE (12) MONTHS OF THE LICENSEE FEES PAID TO LICENSOR FOR THE SOFTWARE OR \$5,000, WHICHEVER IS GREATER.

(c) THE LIMITATIONS SET FORTH IN SECTION 13(a) AND SECTION 13(b) SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

(d) As an accommodation to Licensee, Licensor may provide Licensee with a pre-production release of the Software (often labeled a "**beta release**"). IN ADDITION TO ALL OTHER WAIVERS,

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(e) The Software may contain samples that are provided as an accommodation to Licensee ("**Sample Project Files**"). These Sample Project files are intended to be used for example purposes only. The Sample Project Files may be contained in the Software, Documentation, or downloaded from the Licensor website. Licensor and its Third Party licensors make no representations or warranties regarding Licensee's use of the Sample Project files and related Documentation. In addition to all other waivers, limitations, and disclaimers set forth in this Agreement, such Sample Project Files are provided "as-is," and Licensor disclaims all warranties with regard to this information, including all implied warranties and conditions of merchantability, fitness for a particular purpose, title and non-infringement.

14. Export Regulation. The Software is subject to United States export control laws, including the Export Control Reform Act and its associated regulations. Licensee shall not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Licensee shall comply with all applicable United States or international laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the United States.

15. United States Government Rights. Each of the Documentation and the Software is a "commercial product" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Licensee is an agency of the United States Government or any contractor therefor, Licensee only receives those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the United States Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other United States Government licensees and their contractors.

16. Miscellaneous.

(a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the state of Delaware without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States or the courts of the state of Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(b) In no event shall either party be liable to the other party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including but not limited to: (i) acts of God; (ii) flood, fire, earthquake, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortage of adequate power or transportation facilities

(c) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with

written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the seventh day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Quotation (or to such other address as may be designated by a party from time to time in accordance with this Section 16(c)).

(d) This Agreement, together with the Quotation, all annexes, schedules, and exhibits attached hereto, and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. **The terms of this License shall supersede any terms set forth in Licensee's purchase order, request for proposal, or any other sales document provided by Licensee to Licensor.**

(e) Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensor's prior written consent, which consent Licensor may not unreasonably withhold. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Licensor's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 16(e) is void. Licensor may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(f) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, expressed or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(g) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(h) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(i) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

17. Confidentiality.

From time to time during the term of this Agreement, Licensor (as the "**Disclosing Party**") may disclose or make available to the Licensee (as the "**Receiving Party**") information about its business affairs, products, services, the Software, confidential intellectual property, trade secrets, Third Party confidential information and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential

Information shall not include information that, at the time of disclosure and as established by documentary evidence: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 17 by the Receiving Party or any of its Representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a Third Party source, provided that such Third Party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Receiving Party or its agents, employees, or professional advisors, before being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use, in whole or in part, of any of the Disclosing Party's Confidential Information; or (v) is required to be disclosed under applicable federal, state or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction. The Receiving Party shall: (A) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (C) not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. The Receiving Party shall be responsible for any breach of this Section 17 caused by any of its Representatives. On the expiration or termination of the Agreement, the Receiving Party shall promptly return, and shall require its Representatives to return to the Disclosing Party all copies, whether in written, electronic or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Receiving Party shall be liable for any breaches of this Section 17 by its agents, employees, or professional advisors.