

MASTER LICENSE AGREEMENT

This Master License Agreement that has been referenced in the Quote, along with the Quote, comprise the binding “License Agreement” between the Customer (as identified on the Quote) and Everest Software, Inc. (“Service Provider”) and shall govern any license granted by the Service Provider to the Customer under the Quote. The License Agreement sets forth the terms and conditions under which Customer may (i) use Service Provider’s proprietary software (the “Application(s)”) that is specifically licensed to Customer pursuant to a schedule (the “Quote(s)”); and (ii) use the user documentation that Service Provider makes generally available in hard copy or electronic form to its general customer base in conjunction with the licensing of such Applications (the “Documentation”). The term “Software” shall mean the Applications listed in any Quote and the Documentation delivered to Customer pursuant to the provisions of this License Agreement.

Customer acknowledges and agrees that it is not relying on any statement or warranty not expressly provided herein with respect to the Software provided hereunder.

By signing/agreeing to a Quote, each party acknowledges that it has read, understands, and agrees to the terms of this License Agreement.

GENERAL TERMS AND CONDITIONS

1. LICENSE GRANT AND RIGHT OF USE

1.1. **License Grant.** Any Software licensed hereunder shall be licensed pursuant to a separate Quote. Unless otherwise specifically stated in the Quote, each such license shall be a perpetual, worldwide, nonexclusive and nontransferable license to use only the object code version of the Software, solely to perform those functions defined in the Documentation, and subject to all limitations and restrictions contained herein (“Use”). Web access for permitted third parties’ Use shall be defined in the applicable Quote if such access is to be permitted under this License Agreement. The Software may only be Used on the hardware and software components, including client machines, servers, and internetworking devices within Customer’s internal computer network at Customer’s location. Any ‘Subscription License’ to a Software licensed, as indicated on a Quote, shall be a fixed term, worldwide, nonexclusive, royalty free (upon full payment of subscription fees), and nontransferable license to Use only the object code version of the Software, subject to all limitations and restrictions contained herein. The Subscription License shall expire upon expiration of the Term described on the Quote unless and until renewed as per the terms and conditions of renewal set forth in the Quote.

1.2. **License Type.** Unless otherwise specifically stated in the Quote, the type of license granted shall be a Named User License. A “Named User License” shall mean that the Software licensed pursuant to the Quote may be Used by a limited number of individual users, each identified by a unique user id (the “Named User”), the maximum number of which is specified in the Quote. Customer may designate different Named Users at any time without notice to Service Provider so long as the permitted number of Named Users is not exceeded. If the Quote identifies the scope of the license to be a “Site License,” a “Site License” shall mean that the Software licensed pursuant to the Quote may be Used by an unlimited number of individual users solely for the internal

Use and benefit of Licensee, subject to the terms of this License Agreement. A “Device License” shall mean that the Software licensed pursuant to the Quote may be Used on the number of devices indicated in the Quote. A “Server License” shall mean that the Software licensed pursuant to the Quote may be Used on no more than the number of servers indicated in the Quote. The scope of any license other than a Named User License, Site License, Device License, or Server License must be expressly designated and defined in detail in a Quote. In no event shall any of the licenses denoted above be construed to mean a concurrent user license.

1.3. **Use.** Individuals authorized under the applicable Quote to Use the Software (“Authorized Users”) may Use the Software solely to support Customer’s own internal operations, in the operating software environment specified on the applicable Quote (the “Platform”) and only for the Software licensed herein. Individuals who access the Software, directly or indirectly, whether *via* an Service Provider provided interface or otherwise, and/or cause the Software to perform any functions must be Authorized Users. Authorized Users shall not (i) access the Software to process, or permit to be processed, the data of any other party; or (ii) access the Software for service bureau or commercial time-sharing use. If the Software licensed under a Quote is to be installed on a computer connected to the World Wide Web, as authorized in the applicable Quote, Customer shall not allow any web site, that is not fully owned by Customer, to frame, syndicate, distribute, replicate, or copy any portion of Customer’s web site that provides direct or indirect access to the Software. Unless otherwise expressly permitted in the Quote and subject to Section 1.4 below, Customer shall not permit any subsidiaries, affiliated entities, or third parties to access the Software.

1.4. **Authorized Users.** Unless otherwise specifically provided in the Quote, Authorized Users shall only consist of (i) employees of Customer and (ii) subject to Section 5, “Confidentiality”, third party contractors of Customer who do not compete with Service Provider (“Permitted Contractors”).

Permitted Contractors may Use the Software only at Customer's place of business or in the presence of Customer personnel.

- 1.5. **Additional Restrictions.** In no event shall Customer disassemble, decompile, or reverse engineer the Software or Confidential Information (as defined in Section 5) or permit others to do so. Disassembling, decompiling, and reverse engineering include, without limitation: (i) converting the Software from a machine-readable form into a human-readable form; (ii) disassembling or decompiling the Software by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof; (iii) examining the machine-readable object code that controls the Software's operation and creating the original source code or any approximation thereof by, for example, studying the Software's behavior in response to a variety of inputs; or (iv) performing any other activity related to the Software that could be construed to be reverse engineering, disassembling, or decompiling. To the extent any such activity may be permitted pursuant to written agreement, the results thereof shall be deemed Confidential Information subject to the requirements of this License Agreement. Customer may use Service Provider's Confidential Information solely in connection with the Software and pursuant to the terms of this License Agreement.
- 1.6. **Source Code Escrow.** Provided a Quote so indicates, and subject to the terms of this Section 1.6, Service Provider shall place the source code to the licensed version of the Software in escrow with its preferred escrow agent pursuant to the Preferred Escrow Agreement (the "Escrow Agreement"). Service Provider's obligation to place versions of the Software in escrow shall be subject to (i) execution by the escrow agent, Service Provider and Customer of the Escrow Agreement; and (ii) Customer's continued payment of the escrow fees pursuant to the Escrow Agreement.
- 1.7. **Subcontractors.** Service Provider shall have the right to use third parties, including employees of Service Provider's affiliates and subsidiaries (the "Subcontractors"), who may be foreign nationals, in performance of its obligations and services hereunder and, for purposes of this Section 1.7, all references to Service Provider or its employees shall be deemed to include such Subcontractors.

2. PAYMENT

- 2.1. **License Fees.** Unless otherwise provided in the Quote, Service Provider may invoice Customer for all license fees and all other charges due thereunder immediately following the Quote Effective Date.
- 2.2. **Payment Due Date.** All invoices shall be payable by Customer in United States dollars and payment shall be due thirty (30) days after the invoice date.
- 2.3. **Late Payment.** Any late payment shall be subject to any costs of collection (including reasonable legal fees) and shall bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or at the maximum rate permitted by law, whichever is less.
- 2.4. **Invoice Dispute Resolution.** Without limiting any rights or obligations under the License Agreement, including Section 2.3 above, the following steps will be taken if an invoice becomes past due. Service Provider's accounts receivable and Customer's accounts payable representatives shall use all

reasonable efforts to facilitate immediate payment of the invoice. In the event Service Provider does not receive a commitment for prompt payment, each party shall escalate the matter to Service Provider's Customer Partner, or designated financial officer and Customer's Vice President (the "Final Escalation") for investigation and resolution. Notwithstanding anything to the contrary, the initial contact with Customer's Vice President pursuant to such Final Escalation shall constitute "notice of default" pursuant to Section 9.1.

- 2.5. **Taxes.** All amounts required to be paid hereunder do not include any amount for taxes or levy (including interest and penalties). Customer shall reimburse Service Provider and hold Service Provider harmless for all sales, use, VAT, excise, property or other taxes or levies which Service Provider is required to collect or remit to applicable tax authorities. This provision does not apply to Service Provider's income or franchise taxes, or any taxes for which Customer is exempt, provided Customer has furnished Service Provider with a valid tax exemption certificate.

3. DELIVERY/VERIFICATION

- 3.1. **Delivery.** Unless otherwise specifically provided in the Quote, Service Provider shall deliver to Customer one master copy of the licensed Software (each a "Master Copy") solely for the purpose of allowing Customer to make one copy of the Master Copy for Use by each Authorized User. Customer's right to reproduce the Master Copy shall be limited to the Authorized Reproduction Location, defined as the address for Customer on Quote. Customer shall assume all responsibility for the quality of the copies made by Customer. For purposes of this License Agreement, delivery shall be deemed complete when Service Provider physically delivers, or causes a third party to deliver, a Master Copy to Customer, or makes the Master Copy available to Customer for downloading from Service Provider's File Transfer Protocol ("FTP") site and has provided Customer with the appropriate authorization to access the FTP site. Service Provider will provide Customer with a license key that is required to activate and use the Software. The license key will be provided via email or other like method at Service Provider's discretion. The license key is used to ensure that the Software operates in accordance with the license granted to the Customer in this License Agreement. As such, the Software may contain time-out devices, counter devices, or other similar devices intended to prevent the Software from being used beyond the bounds of the license. Customer consents to such activity and agrees not to disable, attempt to disable or tamper with the license key system or any other such license enforcement technology.
- 3.2. **Archival and Backup Copies.** Subject to the restrictions set forth herein, Customer may make a reasonable number of copies of the Master Copy solely for archival purposes and backup use in accordance with Customer's standard backup processes in emergency situations.
- 3.3. **Marking.** Customer shall include all copyright notices, proprietary legends, any trademark and service mark attributions, any patent markings, and other indicia of ownership and confidential markings on all copies of the Software and any other Service Provider materials provided to Customer, in the content and format contained on the Master Copy and such Service Provider materials. Customer

shall pay all duplication and distribution costs incurred by Customer in making copies of the Software, and shall also pay all custom duties and fees if applicable. Subject only to the license granted herein, all copies of the Software and any other Service Provider materials provided to Customer are the property of Service Provider or its third party licensors from whom Service Provider has obtained marketing rights (the "Third Party Licensors").

- 3.4. **Records.** Customer shall keep and maintain complete and accurate records of each copy of the Software including any and all pertinent distribution information. If the license is a Named User License, Customer shall, upon Service Provider's request, provide reports to Service Provider specifying the cumulative total of copies, and all other reasonably pertinent distribution information. All reports shall be delivered to Service Provider within thirty (30) days of such request.
- 3.5. **Verification.** Customer agrees that Service Provider may, upon thirty (30) days prior written notice, enter Customer's premises to verify Customer's compliance with the provisions of this License Agreement. Service Provider's inspections shall be limited to (i) one annual inspection (unless Service Provider believes that it has just cause for multiple inspections); (ii) Customer's normal business hours; and (iii) those records pertaining to the Software licensed hereunder or other Service Provider Confidential Information. Service Provider's rights of inspection shall remain in effect through the period ending six (6) months from the termination or expiration of this License Agreement and any applicable license hereunder.

4. OWNERSHIP

- 4.1. **Reservation of Rights.** By signing the applicable Quote, Customer irrevocably acknowledges that, subject to the licenses granted herein, Customer has no ownership interest in the Software, or Service Provider materials provided to Customer. Service Provider shall own all right, title, and interest in such Software, or Service Provider materials, subject to any limitations associated with intellectual property rights of third parties. Service Provider reserves all rights not specifically granted herein.

5. CONFIDENTIALITY

- 5.1. **Definition.** All information which is defined as Confidential Information hereunder in tangible form shall be marked as "Confidential" or the like or, if intangible (e.g. visually or orally disclosed), shall be designated as being confidential at the time of disclosure and shall be confirmed as such in writing within thirty (30) days of the initial disclosure.
- "Confidential Information" may include all technical, product, business, financial, and other information regarding the business and software programs of either party, its customers, employees, investors, contractors, vendors and suppliers, including but not limited to programming techniques and methods, research and development, computer programs, documentation, marketing plans, customer identity, and business methods. Without limiting the generality of the foregoing, Confidential Information shall include all information and materials disclosed orally or in any other form, regarding Service Provider's software products or software product development, including, but not limited to, the configuration techniques, data classification techniques, user interface, applications programming interfaces, data

modeling and management techniques, data structures, and other information of or relating to Service Provider's software products or derived from testing or other use thereof. Confidential Information includes all such Confidential Information that may have been disclosed by either party to the other party, before or after the first Quote Effective Date. Confidential Information includes information generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by a party that contains, reflects, or is derived from such information. For the purpose of this entire Section 5, 'Service Provider' shall include all its Affiliates. "Affiliate" under this License Agreement shall mean any entity, directly or indirectly, controlled by or under common control with or controlling a party to this License Agreement.

- 5.2. **Confidentiality of Software.** The following is deemed Service Provider Confidential Information with or without marking or written confirmation: (i) the Software and other related materials furnished by Service Provider; (ii) the oral and visual information relating to the Software and provided in Service Provider's training classes; and (iii) Service Provider's representation methods of modeled data.
- 5.3. **Exceptions.** Without granting any right or license, the obligations of the parties hereunder shall not apply to any material or information that: (i) is or becomes a part of the public domain through no act or omission by the receiving party; (ii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (iii) is rightfully obtained from a third party without any obligation of confidentiality to the receiving party; or (iv) is already known by the receiving party without any obligation of confidentiality prior to obtaining the Confidential Information from the disclosing party. In addition, neither party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government, provided that notice is promptly given to the party whose Confidential Information is to be disclosed so that such party may seek a protective order and engage in other efforts to minimize the required disclosure. The parties shall cooperate fully in seeking such protective order and in engaging in such other efforts.
- 5.4. **Ownership of Confidential Information.** Nothing in this License Agreement shall be construed to convey any title or ownership rights to the Software or other Service Provider Confidential Information or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest in the Service Provider Confidential Information to Customer. Nothing in this License Agreement shall be construed to convey any title or ownership rights to Customer's Confidential Information or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest in the Customer Confidential Information to Service Provider. Neither party shall, in whole or in part, sell, lease, license, assign, transfer, or disclose the Confidential Information to any third party and shall not copy, reproduce or distribute the Confidential Information except as expressly permitted in this License Agreement. Each party shall take every reasonable precaution, but no less than those precautions used to protect its own Confidential Information, to prevent the theft,

disclosure, and the unauthorized copying, reproduction or distribution of the Confidential Information.

- 5.5. **Non-Disclosure.** Each party agrees at all times to use all reasonable efforts, but in any case no less than the efforts that each party uses in the protection of its own Confidential Information of like value to protect Confidential Information belonging to the other party. Each party agrees to restrict access to the other party's Confidential Information only to those employees, who (i) require access in the course of their assigned duties and responsibilities, and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this Section 5. Notwithstanding anything contained hereunder and subject to the Confidentiality obligations set forth under this Section 5, all references to Service Provider or its employees under this Section 5 shall be deemed to include such employees of Affiliates and Subcontractors and Service Provider will ensure that its Subcontractors abide by the applicable terms of the License Agreement.
- 5.6. **Injunctive Relief.** Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party shall be entitled to, in addition to any other remedies available at law or in equity, temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under this Section 5.
- 5.7. **Suggestions/Improvements to Software.** Notwithstanding this Section 5, unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by Customer regarding the Software or other Service Provider materials provided to Customer shall be owned by Service Provider, and Customer hereby agrees to assign any such rights to Service Provider. Nothing in this License Agreement shall preclude Service Provider from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by Service Provider in the performance of any services hereunder.
- 5.8. **Return of Confidential Information.** Upon the written request of disclosing party, receiving party shall return or destroy (and certify such destruction in a signed writing) all Confidential Information of disclosing party, including all copies thereof and materials incorporating such Confidential Information, whether in physical or electronic form. Each party may retain a copy of the other party's Confidential Information solely for archival purposes. To the extent that it is impracticable to return or destroy any Confidential Information, and with respect to any copies retained for archival purposes, receiving party shall continue to maintain the Confidential Information in accordance with this License Agreement. The confidentiality obligations set forth in this License Agreement shall survive the termination of this License Agreement and remain in full force and effect until such Confidential Information, through no act or omission of receiving party, ceases to be Confidential Information as defined hereunder.

6. WARRANTY

- 6.1. **Software Warranty.** Service Provider warrants that for a period of ninety (90) days from the applicable Quote Effective Date (the "Warranty Period"), the Applications will materially conform to the functional specifications set forth in

the Documentation (the "Specifications"). Should the Applications fail to materially conform to such Specifications during the Warranty Period, Customer shall promptly notify Service Provider in writing on or before the last day of the Warranty Period and identify with specificity the nonconformance. To the extent that the nonconformance exists in a current, unaltered release of the Applications, Service Provider shall, at its own cost and expense, use commercially reasonable efforts to correct the nonconformance or, if necessary, replace the nonconforming Applications. In the event that such nonconformance is not rectified, Service Provider will refund to Customer, as Customer's sole remedy for such Application, all license fees paid by Customer for such Application.

- 6.2. **Authorized Representative.** Customer and Service Provider warrant that each has the right to enter into this License Agreement and that the License Agreement and all Quotes executed hereunder shall be executed by an authorized representative of each entity.
- 6.3. **Disclaimer of Warranties.** ANY AND ALL OFCUSTOMIZATIONS, DOCUMENTATION, CONFIDENTIAL INFORMATION AND ANY OTHER TECHNOLOGY OR MATERIALS PROVIDED BY SERVICE PROVIDER TO THE CUSTOMER ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. EXCEPT AS OTHERWISE STATED IN THIS LICENSE AGREEMENT, SERVICE PROVIDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.
- 6.4. **No Modifications.** Notwithstanding anything to the contrary in this Section 6, any and all warranties under this License Agreement are VOID if Customer has made changes to the Software or has permitted any changes to be made other than by or with the express, written approval of Service Provider.
- ## 7. INFRINGEMENT
- 7.1. **Indemnity.** Service Provider will defend at its expense any cause of action brought against Customer, to the extent that such cause of action is based on a claim that the Software, as delivered by Service Provider to Customer, infringes a United States patent, copyright, or trade secret of a third party. Service Provider will pay those costs and damages finally awarded against Customer pursuant to any such claim or paid in settlement of any such claim if such settlement was approved in advance by Service Provider. Customer may retain its own counsel at Customer's own expense.
- 7.2. **Customer Obligations.** Service Provider shall have no liability under this Section 7 unless:
- 7.2.1. Customer notifies Service Provider in writing immediately after Customer becomes aware of a claim or the possibility thereof; and
- 7.2.2. Service Provider has sole control of the settlement, compromise, negotiation, and defense of any such action; and
- 7.2.3. Customer cooperates, in good faith, in the defense of any such legal action.
- 7.3. **No Liability.** Service Provider shall have no liability for any claim of infringement based on (i) Software which has been modified by parties other than Service Provider; (ii) Customer's use of the Software in conjunction with data

where use with such data gave rise to the infringement claim; or (iii) Customer's use of the Software with non-Service Provider software or hardware, where use with such other software or hardware gave rise to the infringement claim.

7.4. **Remedies.** Should the Software become, or in Service Provider's opinion is likely to become, the subject of a claim of infringement, Service Provider may, at its option, (i) obtain the right for Customer to continue using the Software; (ii) replace or modify the Software so it is no longer infringing or reduces the likelihood that it will be determined to be infringing; or (iii) if neither of the foregoing options is commercially reasonable, terminate the license for the Software. Upon such termination of the licenses and Customer's return of the Software pursuant to Section 9 below, Service Provider will refund to Customer, as Customer's sole remedy for such license termination, all license fees paid by Customer for the terminated license, less an amount equal to one-thirty-sixth (1/36th) of the license fees for each month or any portion thereof which has elapsed since the Quote Effective Date of such terminated license. THIS SECTION 7 STATES THE ENTIRE LIABILITY OF SERVICE PROVIDER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT REGARDING THE SOFTWARE.

8. LIMITATION OF LIABILITY

8.1. **Liability Cap.** IN NO EVENT SHALL SERVICE PROVIDER, SERVICE PROVIDER'S THIRD PARTY LICENSORS OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE SOFTWARE, SERVICES, COURSES, OR COURSE MATERIALS, WHICH GAVE RISE TO SUCH DAMAGES DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

8.2. **Disclaimer of Damages.** IN NO EVENT SHALL SERVICE PROVIDER, SERVICE PROVIDER'S THIRD PARTY LICENSORS OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL ARISING HEREUNDER EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

9. TERM AND TERMINATION

9.1. **Termination by Service Provider.** This License Agreement and any license, Quote created hereunder may be terminated by Service Provider: (i) if Customer fails to make any payments due hereunder within fifteen (15) days after Service

Provider delivers notice of default to Customer; (ii) by giving prior written notice to Customer if Customer fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from Customer's receipt of Service Provider's notice to cure such non-performance of material obligation; or (iii) if Customer files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern.

9.2. **Termination by Customer.** This License Agreement may be terminated by Customer by giving prior written notice to Service Provider if Service Provider fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from Service Provider's receipt of Customer's notice to cure such non-performance of material obligation.

9.3. **Termination of Licenses.** Upon termination of this License Agreement or any license hereunder, Customer's rights to the affected Software, Service Provider Confidential Information, and other Service Provider materials (collectively "Materials") shall cease. Customer shall immediately stop using such Materials and shall return such Materials to Service Provider, or destroy all copies thereof. In addition, Customer shall provide Service Provider with written certification signed by an officer of Customer, that all copies of the Materials have been returned or destroyed and that no copies have been retained by Customer for any purpose whatsoever. Following termination, any use of the Materials by Customer shall be an infringement and/or misappropriation of Service Provider's proprietary rights in the Materials. Upon termination of this License Agreement by Customer, Service Provider shall have no further obligation or liability hereunder and all fees due under the License Agreement shall become due and payable to Service Provider immediately upon such termination.

9.4. **Other Remedies.** Termination of this License Agreement or any license created hereunder shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under this License Agreement including, but not limited to, any Quote, or exhibit.

10. MISCELLANEOUS

10.1. **Import/Export.** Customer shall comply with all then-current export and import laws and regulations of the United States and such other governments as are applicable when Using the Software. Customer hereby certifies that it will not directly or indirectly export, re-export, transship, or transmit the Software, or any portion thereof, or related information, media, or products in violation of United States laws and regulations.

10.2. **Compliance With Laws.** Both parties agree to comply with all applicable laws, regulations, and ordinances relating to such party's performance under this License Agreement. The parties agree that the License Agreement shall not be governed by the United Nations Convention on the International Sale of Goods or by UCITA, the application of which is expressly excluded.

10.3. **Assignment.** Customer may not assign this License Agreement or transfer any license created hereunder, by

operation of law, change of control or otherwise (“Assign”) without the prior written consent of Service Provider, and such consent shall not be unreasonably withheld. Notwithstanding the language of this Section, however, Customer may Assign this License Agreement to any person, firm or corporation which, through merger, acquisition by or of Customer or otherwise, succeeds to all or substantially all of Customer's business, provided (i) Customer provides Service Provider with thirty (30) days prior written notice; (ii) the assignee does not compete directly or indirectly with Service Provider; (iii) Customer and any assignee are current in all license fees and other fees due hereunder to Service Provider; (iv) any such assignee agrees in writing to be bound by the terms and conditions of this License Agreement; and (v) if Customer is the acquired party and the license is not a Named User License (a Site or Enterprise License, *etc.*), the licenses and rights of Customer under this License Agreement shall apply to, and may be exercised only in connection with, the operations of Customer as they exist on the date of the acquisition, and the Software, Materials, and Confidential Information of Service Provider may be made available only to Customer personnel working in such operations. In the event of Customer's acquisition of a third party (the “Acquired Entity”), Customer shall decide if employees of such Acquired Entity are to become Authorized Users of the Software or brought under the license. If the total revenue, as stated in the audited financial statements of the previous fiscal year (“Revenue”), for the Acquired Entity is less than fifteen percent (15%) of the Revenue of Customer for the fiscal year immediately preceding the acquisition, Customer shall not be required to pay additional license fees to bring such Acquired Entity under the license. [The revenue percentage described in the preceding sentence shall hereafter be termed the “Revenue Percentage”. If the Revenue Percentage is equal to or greater than fifteen percent (15%), then Customer shall be required to pay additional License Fees to bring such Acquired Entity under the License. The additional fees shall equal the Revenue Percentage multiplied by ninety percent (90%) of the License Fees and Annual Maintenance and Support Fees paid by Customer for the Software pursuant to the applicable Quote. Any assignment or transfer by Customer in violation of this Section shall be null and void.

- 10.4. **Survival.** The provisions set forth in sections 2, 3.3, 3.4, 3.5, 4, 5, 6.3, 6.4, 8, 9.3, 9.4 and 10 of this License Agreement shall survive termination or expiration of this License Agreement and any applicable license hereunder.
- 10.5. **Notices.** Any notice required under this License Agreement shall be given in writing and shall be deemed effective upon delivery to the party addressed. All notices shall be sent to the applicable address specified on the Quote or to such other address as the parties may designate in writing. Unless otherwise specified, all notices to Service Provider shall be sent to the attention of the Contracts Manager. Any notice of material breach hereunder shall include a detailed description of any alleged breach and a description of the steps that Customer understands must be taken by Service Provider to resolve the failure. Service Provider shall have thirty (30) days from Service Provider's receipt of Customer's notice to complete the cure.
- 10.6. **Force Majeure.** Service Provider shall not be liable to Customer for any delay or failure of Service Provider to perform its obligations hereunder if such delay or failure

arises from any cause or causes beyond the reasonable control of Service Provider. Such causes shall include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, or delays by Customer in providing required resources or support or performing any other requirements hereunder.

- 10.7. **Conflict.** In the event of a conflict between the terms and conditions of this License Agreement, a Quote, or an exhibit, , the terms and conditions of the Quote, or exhibit shall prevail, in that order.
- 10.8. **Restricted Rights.** Use of the Software by or for the United States Government is conditioned upon the Government agreeing that the Software is subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. Customer shall be responsible for ensuring that this provision is included in all agreements with the United States Government and that the Software, when delivered to the Government, is correctly marked as required by applicable Government regulations governing such Restricted Rights as of such delivery.
- 10.9. **Entire Agreement.** This License Agreement, including any separately executed Quotes and any exhibits, shall constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals and prior discussions and writings between the parties with respect thereto. All terms respecting the subject matter of the License Agreement and contained in invoices, acknowledgments, shipping instructions, or other forms exchanged between the Parties shall be void and of no effect.
- 10.10. **Modifications.** The parties agree that this License Agreement cannot be altered, amended or modified, except by a writing signed by an authorized representative of each party.
- 10.11. **Nonsolicitation.** During the term of this License Agreement and for a period of two (2) years thereafter, Customer agrees not to hire, solicit, nor attempt to solicit, the services of any employee or Subcontractor of Service Provider without the prior written consent of Service Provider. Customer further agrees not to hire, solicit, nor attempt to solicit, the services of any former employee or Subcontractor of Service Provider for a period of one (1) year from such former employee's or Subcontractor's last date of service with Service Provider. Violation of this provision shall entitle Service Provider to liquidated damages against Customer equal to two hundred percent (200%) of the solicited person's gross annual compensation.
- 10.12. **Headings.** Headings are for reference purposes only, have no substantive effect, and shall not enter into the interpretation hereof.
- 10.13. **No Waiver.** No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy.
- 10.14. **Severability and Reformation.** Each provision of this License Agreement is a separately enforceable provision. If any provision of this License Agreement is determined to be or becomes unenforceable or illegal, such provision shall be reformed to the minimum extent necessary in order for this License Agreement to remain in effect in accordance with its terms as modified by such reformation.

- 10.15. **Independent Contractor.** Service Provider is an independent contractor and nothing in this License Agreement shall be deemed to make Service Provider an agent, employee, partner or joint venturer of Customer. Neither party shall have authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.
- 10.16. **Dispute Resolution.** Any dispute, controversy or claim arising under, out of or relating to this License Agreement and any subsequent amendments of this License Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Austin, Texas. The language to be used in the mediation shall be English. If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within sixty (60) days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of sixty (60) days,

either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be Austin, Texas. The language to be used in the arbitral proceedings shall be English. The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief as necessary, without breach of this Section and without abridgment of the powers of the arbitrator. Notwithstanding anything contained hereunder, Customer agrees and acknowledges that no dispute resolution or litigation shall be pursued by Customer for any breach of this License Agreement until and unless Service Provider has received written notice, pursuant to Section 10.5 and had an opportunity to cure any alleged breach.

- 10.17. **Choice of Law.** THIS LICENSE AGREEMENT SHALL BE GOVERNED AND INTERPRETED BY THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS OF ANY STATE OR JURISDICTION.