ANNOTATED MODEL SOFTWARE LICENSE AGREEMENT[1]

This SOFTWARE LICENSE AGREEMENT ("Agreement") is made as of _____, 20___ (the "Effective Date") by and between _____, a [*state of organization and type of entity*][2] ("Company")[3] with its principal place of business at [*full address of principal place of business*][4] and [*name of licensee*], a [*state of organization and type of entity*][5] ("Licensee")[6] with its principal place of business at [*full address of principal place of business*]. Company and Licensee each may be referred to herein as a "Party," and collectively as the "Parties."

RECITALS[7]

WHEREAS, COMPANY has developed as the author and/or inventor, is the owner of, or has acquired rights to certain Source Code and Software[8], which are more fully described

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[1] There are several types and purposes of software license agreements, ranging from development agreements, to Value-Added Reseller (VAR), typically for companies that combine other companies' products, often including computer hardware, and add their own products, often software, as part of a system or package and then resell it, and OEM agreements, to distribution agreements, to straight end-user license agreements (EULAs). This model agreement is for a license from a software developer company to a larger company, who may wish to incorporate the licensed software into their products. The provisions in this model agreement are generally favorable to the licensor. This provisions of this Agreement are not applicable in all circumstances and the language and commentary are not to be substituted for well considered legal analysis in view of the specific objectives and considerations of the particular envisioned deal.

[2] The parties' states of organization and the types of entities are provided for precision in identifying companies from those of identical names but formed in different states and may remind the negotiators to focus on the correct company if there are affiliated companies with similar names, and to perform the necessary due diligence.

[3] The licensee should be fully aware of who and what the licensor is and that it has adequate rights to the software.

[4] The location of the parties' principal places of business may be important for communication, jurisdiction, venue and choice of law provisions.

[5] Each party should ensure that the other party is in good standing in the state of its principal place of business. A party not in good standing may not have authority to enter into the contract and may call into question the validity of the agreement.

[6] The licensor should confirm the identity of the licensee and whether any affiliates or subsidiaries are included. Licensed affiliates may reduce the potential license revenue, under an enterprise license, especially if the licensee acquires affiliates (or is acquired) after the effective date.

[7] Recitals can be used to provide appropriate context for the agreement, however care must be taken that the recitals are true, not overly broad and are consistent with other parts of the Agreement, especially if the Agreement provides that the recitals are binding on the parties. In particular, ownership rights listed in the Recitals must be checked that they conform with the integration, representations, warranty and disclaimer provisions.

[8] Software and its related documentation are protected primarily through copyright. (Patents may also provide protection to the unauthorized making, use, sale, offer for sale or importation of software

in the list of Licensed Software attached hereto as Exhibit A (collectively with related documentation, revisions, error corrections, enhancements, and updates thereof, hereinafter referred to as the "Software");

WHEREAS, LICENSEE seeks to Use such Software [, *source code*] and documentation;

WHEREAS, LICENSEE wishes to obtain a license from Company and Company wishes to grant a license to Licensee, the Software on the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties, intending to be legally bound, agree as follows:

1. Definitions

As used in this License Agreement, whether in the singular or plural form, the following capitalized terms have the following meanings. Other capitalized terms have meanings as defined elsewhere in this Agreement.

1.1 "Company Source Code" means the technology identified as Source Code in Exhibit A, including but not limited to the human readable software, hardware design files and documentation, as well as all other information and know-how relating to the technology so identified as Source Code in Exhibit A.

1.2 "Confidential Information" means the information described in Section 4, Confidentiality, and includes the Software; Source Code, if any; and the terms and conditions of this Agreement.

1.3 "Derivative Works" means (a) for copyrightable or copyrighted material, any translation (including translation into other computer languages), port, modification, correction, addition, extension, upgrade, improvement, compilation, abridgment or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret.

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inventions.) Under the Copyright Act, and subject to certain exceptions, "the owner of copyright . . . has exclusive rights to do and to authorize" others to display, perform, reproduce, or distribute copies of the copyrighted works, and to prepare derivative works. (17 U.S.C. §§ 106, *et. seq.*) "The copyright is the right to control the work, including the decision to make the work available to or withhold it from the public." Laws. v. Sony Music Entertainment, Inc., 448 F.3d 1134, 1137 (9th Cir. 2006).

1.4 "Designated Equipment" means Licensee's [*select from: computational equipment; central processing server devices, electronic hardware for the interpretation and execution of the Software; workstations; terminals; personal computers; networked personal computers; or other devices as appropriate*] [*namely, product identifications; as listed on Exhibit B*].

1.5 "Designated Site" means [*identify or refer to Exhibit B*].

1.6 "Documentation" means all manuals, user documentation and other related materials pertaining to the Software which are furnished to Licensee by Company in connection with the Software.

1.7 "End Users" means [*identify*].

1.8 "Executable Code", also referred to interchangeably as object code, means Software in a form that can be run, or executed, in a computational device. Typically, but not exclusively, Executable Code is machine language which is comprised of native instructions that the computational device carries out in hardware. Alternatively, Executable Code may be programs written in interpreted languages that may require additional software to convert the program into executable instructions for a particular computational device.

1.9 "Industrial Protected Rights" means (by whatever name or term known or designated) copyrights, trade secrets, patents, moral rights and any other intellectual and industrial property and proprietary rights (excluding trademarks) including registrations, applications, renewals and extensions of such rights anywhere in the world.

1.10 "IP Rights" means all of Company's rights under which Company is authorized to grant the License, including patent rights, copyrights, trade secret rights, *sui generis*[9] database rights, and all other intellectual and industrial property rights.[10]

1.11 "License Fee" means [*state amount or refer to Exhibit A*].

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[9] A classification of rights that exists independently of other categorizations because of its uniqueness or due to the specific creation of an entitlement or obligation.

[10] The definition of "IP Rights," which are sometimes referred to as intellectual property rights or proprietary rights, should include only those rights which the licensor has and under which the licensor is authorized to grant the license. It is important not to overstate the extent of the licensor's rights, as such can inadvertently create a warranty or implied promise that the licensor has greater rights than it may actually have. For example, U.S. copyright law generally does not protect the collection of data or "sweat of the brow" efforts, except for any original manner in which the data is arranged, displayed or selected. However, in some other countries, the creator may have *sui generis* database rights to prevent others from extracting the content of the database or substantial parts of it. (See, for example, The European Community Council Directive of 11 May 1996 on the Legal Protection of Databases (96/9/ECC).)

1.12 "Licensed Field" means [*identify*].

1.13 "Licensed Products" means [*identify or refer to Exhibit A*]

1.14 "License Term" means the period, set forth in Section 13 [*or identified in Exhibit A*], during which the License shall be effective, subject to the other terms of this Agreement.

1.15 "Open Source" means code covered by or governed by one or more of the commonly understood Open Source License Agreements.

1.16 "Net Sales" means Licensee's gross sales (the gross invoice amount billed to customers) of Licensed Products, less taxes, shipping charges, quantity trade discounts actually shown on the invoice, and further, less any *bona fide* returns (net of all returns actually made or allowed as supported by credit memoranda actually issued to the customers). In no event may the total credit taken by Licensee for all discounts and returns taken during any Royalty Period exceed ten percent (10%) of the gross sales of Licensed Products for such Royalty Period. No credit will be permitted for cash or early payment discounts or allowances. No other costs incurred in the manufacturing, selling, advertising, and distribution of the Licensed Products shall be deducted nor shall any deduction be allowed for any uncollectible accounts or allowances.

1.17 "Purpose" means to permit Licensee ***only*** to _____ ***[e.g. support the ZSP 400 product]***, and for no other application, use or purpose.

1.18 "Royalty Period" means the calendar quarterly period on which Royalties owed is determined, see Exhibit A.

1.19 "Software" means the computer programs, in machine readable object, or Executable code form, as well as Company Source Code, if any, listed in Exhibit A, attached hereto and any subsequent error corrections or updates supplied to Licensee by Company pursuant to this Agreement. Exhibit A may be amended from time to time by the Parties in writing.

1.20 "Territory"[11] means [*typically*] the United States of America, its possessions and territories. [*Alternatively, Territory can be defined to be any other*

[11] The "Territory" provision is often underappreciated. Since IP rights are territorial, the licensor should be careful in granting and then warranting and agreement to indemnify, with respect to rights to use the Software in countries outside its normal operations. The licensor should be concerned about the use of its Software in countries where the enforcement of the Agreement or its IP rights may be restricted or where such enforcement may be unduly costly, such as is often the case in India. The licensor also need to be aware of the ease of sending copies of software over the Internet and with the increased outsourcing to foreign countries. Additionally, depending on the technology, the licensor may need to be concerned about complying with (mainly U.S.) export control laws. (See, for example, Section 17). For the purposes of U.S. export control laws, disclosing technology to foreign workers in the United States may be "deemed" to

countries, parts of countries, groups of countries, or jurisdictions[12] *that the parties may designate.*]

1.21 "Use"[13] means [*first alternative*] to: (i) copy or otherwise access from a Workstation all or any portion of the Software object code from or through the Designated Equipment and/or to transmit the Software to the Designated Equipment for the purpose of (a) processing instructions or statements contained in the Software; (b) understanding the contents of such machine readable material; and (c) reasonable backup and archiving, provided, however, that any copies shall be destroyed or returned in the event Licensee's possession or Use of the Software ceases to be rightful; and (ii) to access, copy, and/or print the Software documentation provided by Company in connection with the Use of the Software object code. All Use must be wholly within the Territory. No such Use may be by, on behalf of, or for the benefit of anyone on the U.S. Treasury Department's list of specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders.

[*second alternative*] downloading or copying the Software from storage units or media onto Licensee's equipment in the Territory and/or transmitting the Software for the purpose of processing in the Territory the instructions or statements contained in the Software for Licensee's internal operations.

1.22 "Workstation" means a terminal, microcomputer, or similar computing device operating as a "stand-alone" device or connected to the Designated Equipment via a network, at which the Software is accessed.

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be an export. Also, carrying software on a laptop during a business trip or on vacation, to another country may be an inadvertent export. U.S. export control laws typically required the application for and the granting of an Export License. Such licenses may be difficult to obtain, particularly where the Software employs advanced security or cryptography capabilities. If the licensee is required to exert efforts (*best, diligent, or commercially reasonable*) to promote and sell the licensed products (Software) in the "Territory", the licensor should confirm that the licensee is prepared and willing to maintain such efforts throughout the territory and the licensee should be notified that if it is unwilling or unable to do so, the licensee risks losing exclusivity, the entire license or breaching the Agreement.

[12] When identifying a country or jurisdiction as the Territory, the parties will need to confirm that in such countries and jurisdictions (i) an enforceable copyright covering the Software exists and (ii) that the terms of the license agreement are enforceable.

[13] If a particular type of use is not included either in the "Use" definition or elsewhere in the license grant, the licensee is not being granted rights for such use under the Agreement. Typical "Use" definitions include the right to copy the Software as necessary for installing it on the Designated Equipment and for backing the Software on to storage media, but the "Use" definition may or may not include the rights to distribute (as in a distribution agreement); make derivative works (modify, excerpt, include in other works, or improve), or sublicense the Software. If the right to make derivative works is included, care must be taken to address who shall own the derivative works. The licensor should guard and protect the right to make, distribute and own all derivative works, which is one of the rights provided to the copyright owner under U.S. copyright law.

2. License Grant[14]

Subject to the terms of this Agreement[15],

[*First Alternative – Standard Use-only software license*]

Company grants to Licensee under all IP Rights applicable to the Software, and Licensee accepts [*a nonexclusive or an exclusive*][16], nonassignable license

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[14] The license grant is one of the most important provisions of the Agreement. It determines the scope of the license. Custom software development agreements generally give the licensee the most rights – See first alternative; Source Code use agreements provide specific use and incorporation rights – See second example; VAR, OEM and other types of distribution agreements generally contain fewer licensee rights – See third alternative; and standard end user license agreements (EULAs) for off-the-shelf software generally give the licensee very limited rights – See fourth alternative.

In general, the more rights that are granted, the more the transaction may look like the sale of the software. If considered a sale, the software may be considered a "good" as to which the Uniform Commercial Code may apply. (Where the software is bundled with equipment, such as in VAR or OEM agreements, it still may be considered a "good" for UCC purposes even if only limited rights are granted.) If the transaction is considered to be a sale, a purchaser also has the right under the first sale doctrine to sell the copy to anyone he or she wishes to, but a more limited license generally has no such right unless it is expressly granted. Additionally, a sale implies that the purchaser owns the copy of the software, and as such has the right to copy or adapt the program as an essential step in the use of a program on a machine (not necessarily the one specified) and for archival purposes. (*See, 17 U.S.C. §117(a)).* On the other hand, the retention of title, through licensing, by the licensor of sufficient property located in states where the licensor is not otherwise doing business and does not own property may result in the licensor being deemed "present" in such states for use tax, income tax, personal jurisdiction and possibly other purposes.

The principal negotiating points are typically whether the rights: (i) are exclusive or nonexclusive; (ii) are assignable or personal; (iii) include the right to distribute copies or use the software only for internal purposes; (iv) include the right to make derivative works, that is to modify, the software or not; (v) include countries other than the United States; (vi) pertain to the software source code or just the object or executable code; (vii) are perpetual or for a limited term; and (viii) limit the number of copies that can be made, or the number of computing devices on with the software can be installed at one time (seat licenses) or the organization(s) that may use it (enterprise licenses).

[15] From the licensor's perspective, the "subject to the terms of this Agreement" language is important because it conditions the grant of the license on the licensee's agreement to pay the fee or royalty and to perform the other obligations of the Agreement. Upon a material breach of one or more of the licensee's duties, the license may end automatically, thus possibly giving rise to copyright (and possibly other claims of) infringement, unfair business practices, and/or misappropriation claims – in addition to the breach of contract claims – if the licensee thereafter continues to Use the Software.

[16] Exclusivity need not be all or nothing. It can be limited to specific territories, products, time periods, market channels, etc., and a higher fee or royalty is typically required for more exclusivity. To the extent the license is exclusive; other provisions of this Model Agreement may need to be modified. These provisions could include, assignability, sub-licensability, definition of Use, termination, warrantees and indemnification. It may also be appropriate to add a provision tying the period of exclusivity to minimum royalty payments. A licensor would want to avoid the situation where an exclusive royalty bearing license cannot be terminated or modified even if the licensee ceases to perform royalty bearing activities.

("License") to Use the Software in object [*and source*][17] code form, during the License Term, in the Territory [*only on or through the Designated Equipment at the Designated Site(s) specified in Exhibit B hereto* or *on any computational hardware now or hereafter used by the License in the Territory*] in accordance with the Software documentation [, *solely for Licensee's internal business purposes*[18] *and not for sale, resale or sublicensing*].[19]

[*Second Alternative – Source Code license*]

Company grants to Licensee and Licensee accepts, subject to the terms and conditions of this Agreement, a non-exclusive [*an exclusive*] nontransferable and nonassignable license (1) to Use and modify the Software in Source Code form to create Derivative Products; and (2) to use, manufacture, reproduce, have reproduced, sublicense, market and distribute the Documentation and the Software and any Derivative Products in object code form solely for use with the respective Designated Equipment identified on Exhibit B attached hereto from the Effective Date hereof until terminated in accordance herewith.

Licensee shall have the right to copy or reproduce the Software and Documentation, in whole or in part, as necessary to license to End Users the object code version of the Software for use on designated systems. Such End Users shall be users of Licensee's [*describe*]. Licensee agrees that the Software is Licensor's confidential information and shall treat and handle confidential information in accordance with the provisions of this Agreement. Licensee shall be responsible for the payment of royalties due to Company hereunder based on any licenses granted by Licensee to End Users using the Software, whether or not such amounts have actually been paid to or received by Licensee from its End Users.

Company shall have the right at anytime after two (2) years from the date of this Agreement, to terminate the exclusivity, if any, of the license granted herein in any jurisdiction within the Territory if Licensee, within ninety (90) days after written notice from Company as to such intended termination of exclusivity, fails to provide written evidence that it has licensed End Users or is actively attempting to recruit End Users of

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[17] Generally, only object code is licensed. Where the Software is critical to the licensee and there is a concern that the licensor may not be able to maintain it in a timely manner, the source code may be placed in escrow and governed by the terms of a separate escrow agreement. If the licensee intends and the licensor permits the use of the Software in an Open Source environment, the source code may also have to be licensed in order to comply with the Open Source license obligations.

[18] The Use for these purposes should also include confidentiality provisions (especially with regard to source code and derivative works) including limited access by the licensee and its employees and no or only very limited access by other persons, such as licensee's independent contractors. The Agreement can also include limitations on the number and form of copies of the Software and use of the source code.

[19] Most simple software licenses are nonexclusive, can be used only in object code form, on Designated Equipment only, and for the licensee's own internal purposes only. However, for truly customized software or enhancements, the licensee may well insist on exclusive rights, without limits as to the Use on equipment and can therefore sell, resell or sublicense. Some custom software agreements are essentially an express assignment of all rights to the licensee, in which cases the licensee should expect to pay more.

the Software licensed hereunder within such jurisdiction. Company agrees to negotiate in good faith with Licensee for terms under a non-exclusive arrangement. Evidence provided by Licensee that it has an active development, manufacturing or marketing program directed toward production and licensing of Software shall be deemed satisfactory evidence. Upon Company's written request, but not more than once per calendar year, Licensee agrees to inform Company of its efforts to commercialize Software.[20]

No license to sublicense the source code of the Software or any portion thereof is granted hereunder. In addition, Licensee will not sublicense the object code of the Software or any portion thereof including any Derivative Product to customers of Licensee without a sublicense agreement the terms of which are approved by Company. Each such sublicense agreement shall be written in the principal language used for the conduct of business in the country where the sublicense is being used. Licensee will provide Company with a copy of each sublicense agreement used by Licensee to sublicense the Software. Licensee agrees to use its best efforts to enforce the obligations of its sublicense agreements and to inform Company of any known breach of such obligations. Company shall have the right, as a third party beneficiary, to enforce the terms of each sublicense agreement.

Licensee shall not copy the source code of the Software except that Licensee may make one copy solely for archival or backup purposes and may make such copies as are necessary for the creation of Derivative Works. Moreover, Licensee shall not have the right to: (i) include Open Source code in any distribution of Company's Source Code or Company's Executable Code, (ii) include Company's Source or Executable Code in any distribution of Open Source code, (iii) include Company's Source or Executable Code with Open Source code as a part of a collective work, or (iv) distribute Company's Source or Executable Code as Open Source code or under any Open Source license agreement.

[*Third Alternative – Distribution agreement*]

> Company grants to Licensee and Licensee accepts [*a nonexclusive* or *an exclusive*] non assignable license ("License") to copy, market, and distribute the Software, in object code form only[21] [*and only for use with Designated Equipment specified in Exhibit B, hereto, or other equipment approved by*

[20] If licensor grants licensee an exclusive license it is important that licensor have the means to terminate at least the exclusivity provision should licensee fail to commercially exploit the license in a manner that would produce royalties for the licensor.

[21] This phrase contemplates that the licensee is a distributor of Software to end users.

Company in writing[22]] and to sublicense the Software for such use [*through multiple tiers*[23]].

[*Fourth Alternative – End User agreement*]

Company grants to Licensee [*and its authorized users*] a nonexclusive, personal, revocable, nonassignable, non-sublicensable right ("License") to Use the Software in object code form only in the Territory for the number of Licenses for which the Licensee [*has registered and for which payment has been received*] or [*specified in the online order form accompanying Licensee's download of the Software and for which payment has been received*].[24]

Except for the licenses expressly set forth in this Agreement, Company grants to Licensee no other license or right by implication, inducement, estoppel, or otherwise with respect to the Use of the Software or with respect to any proprietary information or to any patents, copyrights, trade secrets, trademarks, mask works or other Intellectual Property Rights owned or controlled by Company. Any further licenses must be express, in writing and signed by an authorized representative of Company.[25]

3. Restrictions

Licensee shall not, and shall not allow any third party subject to its control to: (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms of the Software by any means whatsoever; (ii) remove any product identification, copyright, or other notices; (iii) provide, lease, lend, use or allow others to use the Software to or for the benefit of third parties; or (iv) except as specified herein or in the applicable user documentation provided by Company or with the prior express, written consent of Company, modify, incorporate into other software, or create a derivative work of any part of the Software (however, nothing in this

[22] This phrase contemplates that the Software is preloaded or embedded in specific equipment and that the combination of the Software and the equipment is distributed to the end users.

[23] This phrase contemplates that the licensee sells the Software through intermediate channels before it reaches the end users. Where such distribution is anticipated, it can be in the licensor's interest to include a provision where the licensee agrees to limit the intervening parties rights, specifically to prohibit decompiling or reverse engineering or making any copies or modifications of the Software.

[24] This grant structures the grant as a license of very limited Use rights.

[25] Although the licenese Agreement should clearly define the scope of the license, this phrase is a "belts and suspenders" phrase intended to make clear that there are not other implied license rights.

subparagraph (iv) prohibits Licensee from using the Software in conjunction with other software it is authorized to use).[26]

Licensee shall not, without prior written approval of Company or other than as expressly provided herein, allow any third party to view or use or itself use the Software for any purpose other than to assist Licensee in Using the Software or maintaining and troubleshooting Licensee's [*Designated Equipment or*] hardware.

Licensee, [*and*] its employees, [*and its independent contractors,*] may be authorized users for purposes of this License Agreement; provided that Licensee is authorized by such user employees [*and independent contractors*] to bind them to the terms of this License Agreement and so binds them.[27]

[*Sublicensing and End Users. Copies of the Software may be distributed to end users only if they have executed a written end user sublicense agreement with Licensor in a form substantially similar to Exhibit C, attached hereto.*][28]

4. Confidentiality

All confidential documentation and technical and business information and intellectual property in whatever form recorded that a Party does not wish to disclose without restriction ("Confidential Information") shall remain the property of the disclosing Party, and may be used by the receiving Party only as provided herein. In any event, Confidential Information includes, without limitation: (i) any source code and internal programmers' documentation for (a) any of the Software disclosed to Licensee and (b) any of Licensee's proprietary software disclosed to Company; (ii) nonpublic financial information concerning either Party; and (iii) either Party's research and development, new product, pricing and marketing plans, unless and until publicly announced. Confidential Information (a) shall not be copied or reproduced, in whole or in part, expect for use as expressly authorized in [*or contemplated by*] this Agreement or other written agreement between the Parties; (b) shall, together with any full or partial copies thereof, be returned or destroyed when no longer needed or upon any termination of the License and/or this Agreement; and (c) shall be disclosed only to employees of a Party each with a need to know. The receiving Party shall advise those employees of their obligations with respect to Confidential Information, and

[26] Copyright does not protect against reverse engineering, but trade secret protection sometimes can. This provision is intended to characterize the underlying source code and related ideas as trade secrets, the misappropriation of which may be actionable.

[27] This language may support the licensor's right to sue directly the licensee's employees and independent contractors who violate the agreement, on the theory that the licensee is authorized to bind them and/or the licensor is a third-party beneficiary under any sublicense to them.

[28] This optional language may be appropriate where the licensee is a distributor of the Software and the licensor can require that a certain form of an End-User License Agreement (EULA) be used.

shall be responsible for the observance of such obligations by those employees. Confidential Information shall be used by the receiving Party only for the purposes contemplated under this Agreement or any other agreement between the Parties, or in the exercise of its rights hereunder or thereunder. Unless the furnishing Party consents in the Agreement or otherwise in writing, such Confidential Information shall be held in strict confidence by the receiving Party.

The receiving Party may disclose Confidential Information to other persons, upon the disclosing Party's prior written authorization, solely to perform acts that the receiving Party is expressly authorized under this Agreement or otherwise in writing by the disclosing Party to perform itself, and further provided such other person agrees in writing (a copy of which writing will be provided to the disclosing Party at its request) to the same conditions respecting use of Confidential Information contained in the first paragraph of this Section 4 and to any other reasonable conditions requested by the disclosing Party.

The foregoing restrictions on the use or disclosure of Confidential Information shall not apply to any information: (i) that can be proven to be or to have been independently developed by the receiving Party or lawfully received free of restriction from another source having the right to so furnish such information; or (ii) after it has become generally available to the public without breach of this Agreement by the receiving Party; (iii) that at the time of disclosure to the receiving Party, was known to such Party free of restriction and clearly evidenced by documentation in such Party's possession; (iv) that the disclosing Party agrees in writing is free of such restrictions; or (v) to the extent such disclosure is required by applicable law, regulation, or valid order of a governmental agency or a court of competent jurisdiction, on the condition that if a Party is required to make any such disclosure of the other Party's Confidential Information, it first shall give reasonable advance written notice to the other Party of such required disclosure, shall only make such disclosure as is required, and shall use its diligent, reasonable efforts to secure, or to assist the other Party in obtaining, a protective order or confidential treatment of such Confidential Information prior to its disclosure. [*Notwithstanding anything herein to the contrary, each Party shall also have the right to disclose [the terms of this Agreement and other] Confidential Information in order to enter into confidential settlements and/or licensing arrangements with third parties, and the Parties shall be entitled to disclose [the terms hereof and other] Confidential Information (a) to a Party's attorneys, financial institutions, accountants, or other professional advisors in the course of seeking professional advice, or (b) to entities with which a Party is discussing a proposed sale of its stock, a sale of all or substantially all of its assets, a merger or consolidation, or the obtaining of financing or entering into a partnership, joint venture, or similar arrangement, provided that any such entity to whom such disclosure is made shall have entered into a confidential agreement*

sufficient to preserve the obligations of confidentiality established under this Agreement.][29]

Each Party agrees to use its best efforts to mark or otherwise identify as proprietary all Confidential Information it desires to be subject to the terms of this Section, before furnishing it to the other Party; however, Confidential Information is subject to the provisions of this Section, whether delivered orally or in tangible form and without regard to whether it has been identified or marked as confidential. Upon request, a Party shall promptly identify whether the specified information must be held to be Confidential Information under this Section 4.

Licensee recognizes and agrees that there is no adequate remedy at law for a breach of this Confidentiality Section, that such a breach [*may] [would*] irreparably harm Company, and that Company is entitled to equitable relief [*including, without limitations, injunctions, and without the posting of a bond*] with respect to any such breach (and may seek equitable relief with respect to any such potential breach) in addition to any other remedies. The receiving Party will notify the disclosing Party in writing immediately upon the occurrence of any unauthorized release or other breach, and shall take such further steps as may reasonably be requested by Company, including but not limited to taking all appropriate and necessary legal action, to prevent or minimize any unauthorized use, modification, copying or transmission thereof.[30]

Licensee shall ensure that no unauthorized person shall have access to the Software, and that no persons authorized to have access shall make any unauthorized copy.

For two years after the Effective Date of this Agreement, neither Party will encourage or solicit any employee or consultant to leave the employ of the other; the foregoing does not prohibit mass media advertising not specifically directed towards employees or consultants of a Party.

The Parties agree that the obligations under this Section will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

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[29] The bracketed parts of the confidentiality provision are possible exceptions to the confidentiality requirements. These exceptions are drafted so as to be mutual, so unless they are made unilateral (which would be atypical), they may be a two-edged sword/shield, and should only be used is appropriate circumstances and not as a standard provision.

[30] Confidential information is unique in that (i) trade secret protection may be lost if the information becomes publicly available and the owner has not taken and does not take reasonable steps to maintain confidentiality, (ii) damages may indeed be inadequate because of the unique nature of the information, and (iii) a receiving party's use of the disclosing party's confidential information in breach of the agreement may be an unfair trade practice. Requiring the receiving party to explicitly recognize these aspects of the exchange of confidential information should estop such party from arguing to the contrary in efforts by the disclosing party to obtain prejudgment and other equitable relief.

5. Ownership

As between the Parties, Company retains all title to and, except as expressly and unambiguously licensed herein, all IP Rights and moral rights in and to the Software. This License does not constitute a sale of the Software or any portion or copy of it.[31]

Licensee further acknowledges that all copies of the Software in any form provided by Company or made by Licensee are the sole property of Company and/or its suppliers. Licensee shall not have any right, title, or interest in or to any such Software or copies thereof, except as provided in this Agreement, and further Licensee shall secure and protect all Software, Derivative Works and Documentation consistent with maintenance of Company's proprietary rights therein.

6. Derivative Works

Title to and ownership of any portion of the Software or Documentation incorporated into a Derivative Work shall at all times remain with Company and/or its supplier, and Licensee shall not have any title or ownership interest therein.

Title to and ownership of any portion of a Derivative Work created by Licensee and not owned by Company and/or its supplier pursuant to this Section shall be held by Licensee.

Licensee may, in its discretion, incorporate the Software, Derivative Works or parts thereof, into other of its products, provided Licensee complies with the provisions herein and Licensee's obligations hereunder, as such Derivative Works or parts thereof shall be considered a copy of the Software for purposes of royalty calculation under this Agreement.

Company shall not be required to maintain or otherwise repair any Derivative Work. Any assistance in repairing errors or defects in Derivative Works which may be provided by Company, it its sole discretion, shall be subject to a separate agreement.

[31] This provision generally attempts to characterize the agreement as a license rather than a sale. However, a perpetual, exclusive, assignable license may be deemed to be equivalent to a sale for various purposes, such as bankruptcy, various state sales or use taxes, and application of the UCC. The "[a]s between the Parties . . ." phrase at the beginning, helps this provision avoid being an inadvertent representation or warranty as to the company's rights in and to the Software. The representation and warranties provision should be the sole provision on this issue.

Nothing in this Agreement shall be construed to limit Company's rights to modify the Software or to develop other products which are similar to or offer the same or similar improvements as any Derivative Works developed by Licensee.

7. Protection of Software and Notices

Licensee shall maintain and place on any copy of the Software, or Derivative Works of the Software, which it reproduces copies and/or distributes, whether for internal use or for distribution to End Users, all such notices as are authorized and/or required hereunder. Licensee shall use the following notice, or such other reasonable notice as Company shall from time to time require, on each copy of the Software. Such notice [shall be loaded in the computer memory for use, display, or reproduction and shall be embedded in program source code and object code, in the video screen display, and] shall be shown on the physical medium embodying the Software copy and on any Documentation and reference manuals:

COMPANY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THIS SOFTWARE AND DOCUMENTATION, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE, AND WARRANTIES OF PERFORMANCE, AND ANY WARRANTY THAT MIGHT OTHERWISE ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, NO WARRANTY IS EITHER EXPRESS OR IMPLIED WITH RESPECT TO THE USE OF THE SOFTWARE OR DOCUMENTATION. Under no circumstances shall Company be liable for incidental, special, indirect, direct or consequential damages or loss of profits, interruption of business, or related expenses which may arise from use of this software or documentation, including but not limited to those resulting from defects in software and/or documentation, or loss or inaccuracy of data of any kind.

[*It is contemplated that the Parties may work together to develop mutually acceptable marketing materials. To that end, the Parties shall use their good faith efforts to submit to the other Party for approval prior to use, distribution, or disclosure, any advertising, promotion, or publicity in which the trade name or trademarks of the other (owning) Party are used. The owning Party shall have the right to require, at its discretion, the correction or deletion of any misleading, false, or objectionable material from any such advertising, promotion, or*

publicity. Nothing in this Paragraph shall be construed to limit or waive a Party's free speech or fair use rights.][32]

8. Patents and Inventions

If Company determines, in its sole discretion, that one or more patent application(s) should be filed for the Software and/or Derivative Works of the Software, Company shall prepare and file such appropriate patent application(s). Upon being notified that Company is interested in preparing and filing such patent application(s), Licensee shall provide all requested information, shall provide the cooperation reasonably required by Company and shall, if requested, provide assignments of rights from Licensee and Licensee's employees, consultants and contractors with regard to the patent(s) and/or patent application(s) to Company. In which event, Licensee shall have a non-exclusive license to the patent(s) and/or patent application(s) filed for the Software and/or Derivative Works of the Software, to make, use, sell, offer for sale, and to sublicense the rights to use the patented Software invention(s) to Licensee's End Users and/or sublicensees, so long as this License Agreement has not been terminated.

9. Licensee Fees and Other Consideration

In consideration of the license rights granted herein, Licensee shall pay Company the License Fees [*Royalty based on Licensee's Net Sales of the Licensed Product*] set forth in Schedule A hereto, in the manner provided herein and on such schedule, for the Software, [*and*] Documentation [and any Derivative Products]. During the term of this Agreement, Licensee may license for additional license fees additional Software under this Agreement pursuant to an amended Schedule A signed by both Parties.

License fees are exclusive of shipping, taxes, duties, and the like, which shall be paid by Licensee. All prices are stated in, and all payments shall be made from, the United States and in U.S. dollars[33]. If not otherwise specified, applicable License fees are due and payable within thirty (30) days of delivery of the Software. Late payments will be subject to late fees at the rate of one and one-half percent (1½ %) per month from the date such fees or charges first became due to cover Company's administrative and collection costs, or, if lower, the maximum rate allowed by law.

License fees do not include consulting services or Software customizations requested by and specifically for Licensee; travel and living expenses for

[32] The bracketed portion of this provision is useful where the licensor would like to use the licensee's name to validate and promote the licensor software, or where the licensee would like to confirm to its customers the inclusion of the licensor's software in the licensee's product.

[33] Some countries require a licensee to withhold a percentage of royalty payments from the licensor for income tax purposes (foreign source income). The provision that payments shall be made from the United States in U.S. dollars is intended to ensure that the licensor is not subject to such withholdings.

implementation services, meetings, installation, training, and so forth; file conversion costs; or the costs of any recommended hardware. Licensee shall reimburse Company for all preapproved services, reasonable travel and subsistence, and other reasonable, documented expenses incurred by Company for services rendered or materials provided under this License Agreement. [*The documentation of expensesshall include copies of all related invoices and receipts received by Company for such expenses.*] All daily charges and out-of-pocket expenses shall be invoiced monthly and shall be paid within thirty (30) calendar days from date of invoice.

10. Inspection and Audit

Licensee shall maintain at all times an accurate record of the number and locations of all copies of the Software, and shall provide to Company a copy of such record immediately upon request.[34]

[ROYALTY REPORTS – For each Royalty Period, Licensee shall provide Company with a written royalty statement in a form acceptable to Company. Such royalty statement shall be certified as accurate by a duly authorized officer of Licensee reciting, on a country by country basis, the stock number, item, units sold, description, quantities shipped, gross invoice, amount billed customers less discounts, allowances, returns and reportable sales for each Licensed Product. Such statements shall be furnished to Company regardless of whether any Licensed Products were sold during the Royalty Period or whether any actual Royalty was owed. The receipt or acceptance by Company of any royalty statement or payment shall not prevent Company from subsequently challenging the validity or accuracy of such statement or payment.]

Company shall have the right, upon reasonable notice, to inspect Licensee's records and all other documents and materials in Licensee's possession or control with respect to the subject matter of this Agreement. Company shall have free and full access thereto for such purposes and may make copies thereof. In the event that such inspection reveals an underpayment by Licensee to Company, Licensee shall pay the difference, plus interest calculated at the rate of One and One Half (1½ %) per month. If such underpayment is in excess of One Thousand United States Dollars ($1,000.00) for any payment [*Royalty*] period, Licensee shall also reimburse Company for the cost of such inspection.

All books and records relative to Licensee's obligations hereunder shall be maintained and made accessible to Company for inspection at a location in the United States for at least two (2) years after the termination of this Agreement.

11. Delivery, Implementation Installation and Acceptance

[34] This provision is most appropriate if the license allows for use of the Software on a per-seat or per-CPU basis, but would not typically be appropriate for a general enterprise license.

Company will use commercially reasonable efforts to deliver and install each Software program in accordance with its respective implementation schedule included in Exhibit A at its respective Designated Location, as specified in Exhibit B. [*Company shall deliver or provide for the downloading of the Licensed Software (in machine readable form) to Licensee's Designated Location, as specified in Exhibit B.*] For each License granted hereunder, Company shall provide one set of documentation for the appropriate Licensed Software program.

Installation shall be complete when a copy of the Software program has been installed on Licensee's Designated Equipment at the Designated Location, and the executability of the Software on such computer system has [*in Company's judgment been sufficiently*] [*been reasonably*] demonstrated. Completion of installation shall constitute Licensee's acceptance of the Software, but shall not affect any warranties still in effect under this Agreement.

[*ALTERNATIVE – Licensee shall commence acceptance testing [[as soon as practicable following its receipt of the Deliverables] or [in accordance with the Acceptance Testing Schedule attached to Exhibit A].] [Within [x [[calendar] or [business] days] of completing such testing, Licensee shall issue to Company a notice of acceptance or rejection of the Software. In the event of rejection for failure of the Software to substantially conform to the specifications mutually agreed upon between the Parties ("Specifications"), Licensee shall give its reasons for rejection to Company in writing and in reasonable detail, and shall provide such additional information as Company may reasonably request. Company shall use reasonable efforts to correct any material nonconformities and resubmit the rejected items as promptly as possible.] [Upon receipt of the revised Software, Licensee shall have [x [[calendar] or [business] additional days] to test the revised Software and either: (a) accept it and issue an acceptance notice; or (b) request that Company make further corrections to substantially meet the Specifications, and repeat the correction and review procedure set forth in this Section. [In the event Company and Licensee agree that the Software continues to include material nonconformities after three attempts at correction by Company and that the Specifications should be achievable without such material nonconformities, Licensee may terminate this Agreement in accordance with Section 13, below. Otherwise, the Specifications shall be deemed to have been modified to conform to the performance of the Software and Licensee shall be deemed to have finally accepted the Software.]*[35] *[Licensee shall be considered to have finally accepted the Software upon the earlier of: (i) the date of its acceptance notice; [(ii) the end of the final testing period, unless Licensee issues during such period a rejection notice pursuant to this Section;] [[(ii) or (iii)]] deemed acceptance pursuant to this Section or any Use (other than acceptance testing) by Licensee of the Software.]]*[36]

[35] This is a very pro-licensor acceptance dispute resolution provision.

[36] This provision is for use when the licensor will customize the Software for the licensee.

[2ND ALTERNATIVE - Company shall prepare an implementation plan ("Implementation Plan") for implementation of the Software across Licensee's enterprise as it exists at the time of delivery and for the development of Licensee-requested enhancements, if any, to the Software. Company shall submit the Implementation Plan to Licensee for review and acceptance, such acceptance shall not be unreasonably denied. Company's services to implement the Implementation Plan shall be performed pursuant to a separate software services agreement between the Parties ("Services Agreement"). Company shall install and configure the Licensed Software modules at Licensee's Designated Site(s) for the purpose of prototype development, integration, testing, training, and acceptance, all in accordance with the Implementation Plan. Testing and acceptance of the Software shall be done in accordance with Section(s) ___ of the Services Agreement and the Implementation Plan attached thereto.][37]

[3rd ALTERNATIVE – Company shall delivery to Licensee a master copy of the Software licensed hereunder in object code form suitable for reproduction[, together with a copy of the Software in source code form]. Company shall deliver the foregoing in electronic files only.][38]

12. Maintenance, Modifications, Support and Cooperation

Licensee shall be exclusively responsible for the testing, supervision, management and control of its Use of the Software, including without limitation: (i) determining whether the Software will achieve the desired results; (ii) obtaining the rights to use, and properly maintaining, the computers and other hardware and operating systems necessary and appropriate to operate the

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[37] This provision is a pro-licensee provision for acceptance for use when the Software includes licensee-requested and paid for enhancements. More typically used in Custom Software Development projects.

Custom software development, whether as a stand-alone agreement or part of a software license, should address the following areas: (i) software specifications, including functionality, special features and compatibilities; (ii) development schedule; (iii) performance milestones or benchmarks; (iv) respective responsibilities of the parties (e.g., licensor will do the development work, while licensee will provide information and access to its systems, data, intended uses, personnel, equipment and facilities; (v) testing, modifications, retesting protocols and timetables; (vi) acceptance standards; (vii) ownership; (viii) payment terms; and (ix) consequences of failure to perform or deliver. These subjects are typically described in a separate, potentially very detailed attachment to the agreement. In general, the specifications should be sufficiently detailed to allow the parties (as well as an independent third party) to determine whether or not the licensor has performed, and what level of performance entitles the licensor to specified payments. Testing, rejections and acceptance should require written notices, with information reasonably to be shared by the parties in order to allow any deficiencies to be overcome. Joint ownership should be avoided if possible, especially if patented or patentable inventions may be included. Rather, one party should own the derivative work and license it, cross-license it, or license it back to the other. Except with exclusive licenses, the owner ordinarily has the right to assign or license the derivative work to others.

[38] Minimalist delivery provision for use with a source code license, where little, if any, Licensor support is planned.

Software in accordance with this Agreement; (iii) providing a proper environment and utilities for the computers on which the Software operates, including an uninterrupted power supply; (iv) having properly trained personnel; (v) ensuring proper machine configuration, audit controls, and operating methods; (vi) establishing adequate backup plans, based on alternative procedures and access to qualified programming personnel; and (vii) implementing sufficient recovery procedures and checkpoints to satisfy its requirements for security and accuracy of input and output as well as restart and recovery in the event of malfunction.

[*Company will provide without extra charge to Licensee (other than reimbursement of expenses) up to [x] calendar person-days of training for up to [y] persons designated by Licensee in the use and operation of the Software at Licensee's principal offices, at mutually convenient time(s). Upon written request by Licensee, Company will provide additional training as set forth in the Services Agreement entered between the Parties concurrently herewith.*][39]

The Parties shall at all times cooperate with and Licensee shall provide reasonably necessary information requested by Company to support its efforts to perform its obligations under this License Agreement and generally.

Any update, modification, or new release of the Software provided by Company to Licensee will be subject to all limitations, restrictions, and qualifications relating to the Software as set forth herein, as well as Licensee's obligations with respect to the Software. Unless set forth herein, or another written agreement between the Parties, Company shall have no obligation to provide Licensee with updates, releases, or new versions of any of the Licensed Software modules.

[ALTERNATIVE MODIFICATION PROVISION FOR USE WITH SOURCE CODE LICENSE – Company will provide Licensee with error corrections, bug fixes, patches or other updates to the Software licensed hereunder in object code form to the extent available in accordance with Company's release schedule for a period of one (1) year from the date of initial delivery. In addition, Company will provide Licensee with updated source code for each new release of the Software licensed hereunder to the extent available for a period of one (1) year from the date of initial delivery.

Licensee may, from time to time, request that Company incorporate certain features, enhancements or modification into the Software. Company may, in its sole discretion, undertake to incorporate such changes and distribute the Software so modified to all or any of Licensee's licensees.

[39] Depending on the degree of sophistication of the Software, it may be customary in the industry to provide a limited amount of training to be included at no extra charge. The primary issues for training are: (i) how much training, e.g., the number of person-days and the number of trainees; (ii) the location; and (iii) the cost, if any.

All such error corrections, bug fixes, patches, updates or other modifications shall be the sole property of Company.]

13. Term, Termination and Post Termination Rights

This License Agreement is effective from the Effective Date until terminated or until it expires, all as provided below. [*This License is effective from the Effective Date and for a period of _____ (___) years thereafter unless and until earlier terminated in accordance with this Agreement*].[40]

Either Party may terminate this Agreement if the other Party breaches any of its material terms or conditions and fails to cure such breach within thirty (30) days of written notice thereof; provided, however, that if the breach is not reasonably susceptible to cure within thirty (30) days, the Agreement shall not terminate as long as the defaulting Party shall have commenced a cure within that time period and shall, with reasonable diligence, prosecute the cure without interruption until completed.

Company may terminate the License immediately upon giving notice to Licensee of any material breach by Licensee of the Confidentiality or Use of Source Code provisions of this Agreement.

[*Licensee may terminate the License for any specific Software program at any time [[for any reason] or [due to rejection of the Software under the Test and Acceptance provisions of this Agreement]] [within six (6) months of the Effective Date] by providing at least thirty (30) calendar days prior written notice to Company for a pro rata refund of the License fees actually paid and received by Company for such program.*]

Upon termination of this Agreement and/or the License for any reason, Licensee [*and all of its Users*] shall cease all use of the Software and Licensee shall return to Company [or destroy] all copies of the Software and all portions thereof (whether or not modified or incorporated with or into other software) [*and so certify to Company that it has done so*]. [*Notwithstanding the foregoing, end users properly sublicensed prior to termination may continue to use the Software under the terms of their written sublicense agreements, but all sublicense agreements will inure to Company's benefit, and Licensee will execute documents and provide assistance as reasonably requested by Company to enable it to enforce them.*]

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[40] This provision establishes a finite license term rather than a perpetual license. This may be more appropriate when the license is exclusive to the licensee, so that the licensor can prevent the license from being deemed to be an assignment. In determining an appropriate term, consider how quickly the software may become obsolete through developments such as competing software, new versions, or other technological changes.

[*Further, upon termination of this Agreement, all Royalty obligations, including the Guaranteed Minimum Royalty, shall be accelerated and shall immediately become due and payable. Licensee's obligations for the payment of Royalties shall survive expiration or termination of this Agreement and will continue for so long as Licensee continues to sell Licensed Product or receives payments for Licensed Product(s) from Licensee's customers.*]

Except for the License, and except as otherwise expressly provided herein, the terms of this Agreement shall survive termination. [*Licensor's obligations under sections 2, 11, 12, 14, and 16 shall not survive termination of the License.*] Termination is not an exclusive remedy, and all other remedies will be available whether or not the License is terminated.

14. Warranty and Disclaimers

Ownership. [*Except for the rights, if any of the Government of the United States, as set forth below,*] Company represents its belief that it is the owner of the entire right, title, and interest in and to Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict the rights granted hereunder except as stated herein.

[*Government Rights. Licensee understands that Software may have been developed under a funding agreement with the Government of the United States of America and, of so, that the Government may have certain rights relative thereto. This Agreement is explicitly made subject to the Government's rights under any such agreement, applicable law or regulation and this Agreement, the terms of such Government agreement, applicable law or regulation shall prevail.*]

Limited Warranty. Company warrants that the media, if any, on which the Software is furnished will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery ("Warranty Period"). Any third-party software and any hardware furnished with or accompanying the Software is not warranted by Company. Licensee's exclusive remedy under this Limited Warranty is replacement of any defective physical media on which the Software is furnished, as follows: To receive a replacement for defective media under this Limited Warranty, return the defective media to Company during or immediately following the Warranty Period, with proof of payment.[41]

[*Alternative Limited Warranty. Company represents and warrants to Licensee that Software when properly installed by Licensee and used with the Designated Equipment will perform substantially as described in Company's then current Documentation for such Software for a period of ninety (90) days from the date of shipment. Licensee's exclusive remedy under this Limited Warranty is, at*

[41] This Limited Warranty goes only to the physical medium (if any) on which the software is placed.

Company's options either: (1) return of the price paid; or (2) repair or replacement of Software upon its return to Company; provided Company receives written notice from Licensee during the warranty period of a breach of warranty. Any replacement Software Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.][42]

[*Software Warranty. Company warrants for a period of [ninety (90)] days from the date of acceptance of each Software program hereunder that: (i) such Software, as so delivered, shall substantially conform to the Specifications for such Software; [and] (ii) the Software, as so delivered, shall conform to and operate in accordance with the documentation supplied by Company to Licensee[;] [(iii) the Software shall be and has been developed using good workmanship in accordance with high professional standards;] [(iv) there is no claim, litigation, or proceeding pending or threatened with respect to the Software or any component thereof;] [(v) to Company's actual knowledge, [with no duty to investigate], neither the Software nor the proper exercise of the rights granted under this License Agreement shall infringe upon the [U.S.] intellectual property rights[, or require any further license, of any other person or entity except third-party software or hardware generally required for Licensee's Designated Equipment];] [(vi) the Software as delivered by Company will not introduce any [known] viruses into the Licensee's network;] [and (vii) the Software does not contain any Open Source or copyleft components." The foregoing warranties shall not apply to the extent that any breach thereof arises out of any modifications to the Software made by or for the Licensee, or its employees, agents, or contractors or any third party without the written consent of Company.*][43]

Limitations. Notwithstanding the warranty provisions set forth in this Section, all of Company's obligations with respect to such warranties shall be contingent on

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[42] This Limited Warranty includes the functionality of the Software.

[43] This Software Warranty is not unusual for customized software and it includes warranties that the software shall operate in substantial conformance with the documentation, and that it contains no known viruses. Most licenses do not include the complete selection of warranties listed. Some licenses also include warranties of title, but it is not always clear what this means (perhaps clearer in the case of a sale of "goods" under the UCC) and it is not appropriate where some of the code is licensed to, but not owned by, the licensor. Note that modifications by the licensee should void certain but not necessarily all warranties.

Some licensees try to obtain an absolute warranty that the software shall not infringe upon the intellectual property rights of any third party, including patent rights. Such a position is generally considered unreasonable because the licensor: (i) has no ability to know whether the software infringes on patents whose applications have been filed but not published; and (ii) in any event typically does not have the resources to conduct exhaustive freedom to operate patent analysis. As a compromise, the parties may agree to an absolute warranty as tot copyrights and trade secrets, the noninfringement and non-misappropriation of which should be in the licensor's control, but only an "actual knowledge" warranty as to patent infringement. That said, the licensor should be very cautious about providing an absolute warranty as to copyrights and/or trade secrets where the software or portions of it were acquired from a third party (such as a developer) and/or the licensor does not have full information on the third party's rights and title.

Licensee's use of Software in accordance with this Agreement and in accordance with Company's instructions as provided by Company in the Documentation, as such instructions may be amended, supplemented, or modified by Company from time to time. Company shall have no warranty obligations with respect to any failures of Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.

WARRANTY DISCLAIMER. EXCEPT AS PROVIDED EXPRESSLY ABOVE, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, CAPACITY, AND TITLE, AND ANY EXPRESS WARRANTIES BY DESCRIPTION, REPRESENTATION, OR OTHER AFFIRMATION OF FACT, SAMPLE, OR ILLUSTRATION, WHETHER ORAL, WRITTEN, OR CONTAINED IN ANY LETTER, BROCHURE, WEBSITE, PHOTOGRAPH, OR OTHER MEDIUM. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS WITH LICENSEE. [*COMPANY DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, WILL MEET ALL OF THE NEEDS OF LICENSEE, OR WILL CAUSE THE LICENSEE TO BE IN COMPLIANCE WITH ANY OR ALL LAWS, REGULATIONS, SPECIFICATIONS OR STANDARDS.*] [*COMPANY DOES NOT AND CANNOT WARRANT THE PERFORMACE OR RESULTS OF USING THE SOFTWARE.*][44]

15. Limitation of Liability

EXCEPT AS PROVIDED HEREIN, COMPANY'S SOLE OBLIGATION OR LIABILITY UNDER THIS AGREEMENT IS THE REPLACEMENT OF DEFECTIVE MEDIA. AND EXCEPT WITH RESPECT TO A BREACH OF SECTION 16 (INDEMNIFICATION) OR SECTION 4 (CONFIDENTIALITY) IN NO EVENT SHALL [[*COMPANY] OR [EITHER PARTY*]] BE LIABLE FOR ANY LOST REVENUE, LOST PROFITS, INDIRECT, SPECIAL, INCIDENTIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, ARISING OUT OF THIS LICENSE AGREEMENT, EVEN IF ADVISED OF THE POSSIBLITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF PURPOSE OF ANY LIMITED REMEDY. [*ADDITIONALLY, IN NO EVENT SHALL COMPANY BE RESPONSIBLE FOR LOSS OF DATA OR RECORDS OF LICENSEE, IT BEING UNDERSTOOD THAT LICENSEE SHALL BE RESPONSIBLE FOR ENSURING PROPER AND ADEQUATE BACKUP AND*

[44] Warranty disclaimer should be clear and conspicuous. If they are, as between merchants, they should be valid.

STORAGE OF ITS DATA.] THE TERMS OF THIS LIMITATION DO NOT LIMIT OR EXCLUDE ANY LIABILITY TO THE EXTENT NOT PERMITED BY APPLICABLE LAW. IN NO EVENT SHALL THIS AGREEMENT BE CONSTRUED TO EXEMPT COMPANY FROM LIABILITY FOR DAMAGE OR INJURY INTENTIONALLY CAUSED SOLELY BY ITS OWN ACTS OR FOR ITS OWN VIOLATIONS OF LAW. [*NOTWITHSTANDING ANTHING TO THE CONTRARY IN THIS AGREEMENT [EXCEPT THE TWO IMMEDIATELY PRECEDING SENTENCES], COMPANY'S TOTAL AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED THE AMOUNTS RECEIVED BY COMPANY FROM LICENSEE UNDER THIS AGREEMENT [DURING THE SIX-MONTH PERIOD PRECEDING THE ACCRUAL OF ANY LIABILITY OF COMPANY TO LICENSEE AND WRITTEN NOTICE BY LICENSEE TO COMPANY OF SAME].*][45]

16. Indemnification

Company shall hold Licensee and its officers, directors, shareholders, agents, and employees harmless from damages awarded to a third party by a final court judgment (and, if Company has not assumed control of defense and settlement, reasonable attorneys' fees and costs incurred by Licensee) on account of or arising out of Company's breach of any of its warranties set forth in Section 14, provided, however, that Company is promptly notified of any and all threats, claims, and proceedings (hereinafter referred to collectively as "a claim" or "claims") related thereto and is given reasonable assistance and, if Company agrees that Licensee is entitled to indemnification and if there is no material conflict of interest, the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise. Company will not be responsible for any settlement it does not approve in writing. The foregoing indemnification obligations do not apply with respect to Software or portions or components thereof (i) that are not supplied by Company; (ii) that are made in whole or in part in accordance with Licensee specifications or requests; (iii) that are modified after delivery by Company, if the claim relates to such modification; (iv) that are combined with other products, processes, or materials where the claim relates to such combination; (v) to the extent Licensee continues (allegedly) activity giving rise to the claim after being notified thereof and/or is provided at no additional cost with modifications that would have avoided the stated claim without materially impairing the Software's functionality, downtime, or serviceability; [*or*] (vi) where Licensee's use of the Software is incident to a claim not resulting primarily from the Software or is not strictly in accordance with the License*[; or*

[45] Limitations of liability should be clear and conspicuous. In some jurisdictions, such as California, they should expressly apply to claims of "negligence;" otherwise, they may be construed to apply only to contract claims. Although limitations of liability provisions generally run in favor of the licensor, the licensee may be able to make this provision, at least in part, mutual. The parties, particularly the licensor, may also try to include a dollar cap, sometimes a somewhat arbitrary amount (for instance, $x million) or sometimes tied to the amount of fees paid or to be paid (a fraction or multiple thereof) under the Agreement.

(iv) that is alleged to infringe laws (statutes or common law) other than those of the United States].

In the case of Company defending and/or settling a claim of infringement Company may, at its option: (i) procure for Licensee rights to continue using the Software and to continued enjoyment of the License granted under this License Agreement; (ii) replace or modify the Software so that it becomes noninfringing but substantially equivalent in functionality and performance; or (iii) if neither of the actions (i) or (ii) above, is reasonably feasible in spite of Company's reasonable efforts, Company shall have the right to terminate this Agreement and the rights granted herein, and refund to Licensee the (unamortized portion of the] Licensee fee actually paid by Licensee for such Software *[as amortized on a straight-line basis over five years from the Effective Date*].

Company shall have no obligations under this Section 16, if it has provided Licensee with changes that would have avoided the claim and the changes are not fully implemented by Licensee within a reasonable time.

Except as otherwise provided herein, Licensee will indemnify Company and its officers, directors, shareholders, agents, and employees from all damages, settlements, attorneys' fees, and expenses related to a claim of infringement or misappropriation or as a result of Licensee's use of the Software, arising through no fault of Company and excluded, whether expressly or implicitly and whether directly or indirectly, from Company's indemnity obligation.[46]

Licensee agrees to defend, indemnify and hold harmless Company from any and all loss, liability and expense (including reasonable attorney's fees and court costs) incurred by Company as a result of any claim, demand or action brought against Company as a result of Licensee's unauthorized or improper Use, export or re-export of the Software.

In satisfying any indemnity obligation under this Section 16, the indemnifing party shall defend the indemnified party with counsel reasonably acceptable to the indemnified party, and shall not compromise or otherwise settle a claim or action

[46] Patent, copyright, and other IP infringement litigation can be and generally is very expensive. Indemnification provisions are therefore often hotly negotiated. The licensor's indemnity obligations can be qualified or limited, and the licensor should be able to satisfy them if it does any one of the following: (i) defend and indemnify against the claim; (ii) acquire a license or release for the licensee from the third-party claimant; (iii) replace the software with equivalent noninfringing software with equivalent noninfringing software at no additional charge; or (iv) modify the software in a way that maintains its functionality and serviceability. If forced to provide IP indemnification, licensors should consider restricting indemnification to claims of infringement of U.S. IP rights only. Current forms of standard commercial general liability insurance typically provide only very limited coverage, if any, for IP infringement claims. The parties may want to consider trying to obtain specialized insurance, which may cover certain types of infringement claims, and negotiate over which party should be responsible for obtaining, paying for, and maintaining such coverage. A licensor may wish to negotiate the licensee's demand for indemnification by pointing out that the licensee is effectively asking the licensor to provide insurance and such insurance would need to be priced into the cost of the Software.

against the indemnified party without its consent, which shall not be unreasonably withheld, conditioned or delayed.

17. Export Requirements

Licensee shall comply strictly with all applicable export laws, restrictions and regulations of any United States or foreign agency or authority. Licensee will not export or re-export, or allow the export or re-export of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations. In particular, but without limitation, the Software may not be exported or re-exported (i) into (or to a national or resident of) any U.S. embargoed country, or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. By using the Software, Licensee represents and warrants that it is not located in, under control of, or a national or resident of any such country or on any such list. Licensee shall obtain any necessary licenses and/or exemptions and shall be responsible for all related expenses with respect to the export or re-export of the Software or any part thereof.[47]

18. Government Contracts

[*Licensee represents that it is not a government agency, and that it is not acquiring the License pursuant to a government contract or with government funds. As defined in FAR § 2.101, DFAR § 252.227-7014(a)(1) and DFAR § 252.227-7014(a)(5) or otherwise, all software and accompanying documentation provided in connection with this Agreement are "commercial terms," "commercial computer software," and/or "commercial computer software documentation." Consistent with DFAR § 227.7202 and FAR § 12.212, any use, modification, reproduction, release, performance, display, disclosure, or distribution thereof by or for the U.S. government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. Licensee will ensure that each copy of the Software used or possessed by or for the government is labeled to reflect the foregoing. Furthermore, if the Software, Derivative Products or Documentation to be furnished hereunder are to be used in the performance of a government contract or subcontract, the Software shall be provided on a "restricted rights" basis only and Licensee shall place a legend, in addition to applicable copyright notices, in the form provided under the governmental regulations. Company shall*

[47] Information on export control requirements, including but not limited to the U.S. Export Administration Regulations (EARs) , is well beyond the scope of this publication. However, the U.S. Bureau of Industry and Security (part of the U.S. Department of Commerce) – which is the major, but not the only, federal agency with responsibility for controlling exports – has a website with links to a brief overview ("Export Control Basic"), the EARs, and other resources. See, www.bis.doc.gov.

not be subject to any flow down provisions required by the governmental customer unless agreed to in writing by Company.][48]

19. Infringements

Company shall have the right, in its sole discretion, to prosecute lawsuits against third persons for infringement of Company's rights in the Software. Licensee agrees to fully cooperate with Company in the prosecution of any such suit.

20. Insurance

Licensee shall, throughout the Term of the Agreement, obtain and maintain at its own cost and expense from a qualified insurance company licensed to do business in New York with a Best Rating of B+ or better, standard Product Liability Insurance naming Company, its officers, directors, employees, agents, and shareholders as additional insured parties. Such insurance policy shall provide protection against all claims, demands and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Product or any material used in connection therewith or any use thereof. The amount of coverage shall be as reasonably required by Company. The policy shall provide for ten (10) days notice to Company from the insurer by Registered or Certified Mail, return receipt requested, in the event of any modification, cancellation or termination thereof. Licensee agrees to furnish Company a certificate of insurance evidencing same within thirty (30) days after execution of this Agreement and, in no event, shall Licensee manufacture, distribute or sell the Licensed Product prior to receipt by Company of such evidence of insurance.

21. General Provisions

21.1 Agreement Binding on Successors

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

21.2 Assignability

[[Licensee may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Company[, except to a person or entity who acquires all or substantially all of the assets or business of Licensee, whether by sale, merger or otherwise].] or [Neither Party may

[48] This provision should be used if the software and its documentation are "commercial" – that is, generally used for sale to the general public and not customarily used for governmental purposes – to preclude the U.S. government from claiming certain rights to the software under the Federal Acquisition Regulations (FARs) and Defense Federal Acquisition Regulations supplement (DFARs). A discussion of the FARs and DFARs is beyond the scope of this document, but parties should become familiar with them if the software may be used even indirectly for work to be performed by or for the government.

assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party[, which consent shall not be unreasonably withheld[, delayed or conditioned]].] Any attempted assignment or transfer in violation of this Assignability provision shall be void and without effect. This License will bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

21.3 Force Majeure

Each Party's obligations shall be excused from responsibility during the minimum practical time cause by any delay, interruption, error, or malfunction resulting from natural disaster; transportation problems; defect or malfeasance of third-party software, hardware, communications, or power supplies; strikes; actual or threatened war (whether or not declared); civil unrest; riots; earthquakes; floods; fire; actual or threatened terrorist acts; acts or omissions of persons not hired, retained, or supervised by the Party requiring an excuse of performance; Acts of God; and other acts, events, or circumstances beyond its reasonable control, whether or not foreseeable or identified.

21.4 Restrictions on Licensee

Licensee represents that to its knowledge neither this Agreement (or any term hereof) nor the performance of or exercise of rights hereunder is restricted by, contrary to, in conflict with, ineffective under, requires registration or approval or tax withholding under, or affect's Company's IP Rights (or the duration thereof) under, or will require any termination payment or compulsory licensing under, any law or regulation of any organization, country, group of countries, or political or governmental entity located within or including all or a portion of any geographic area where any copy of the Software or any part thereof (whether or not incorporated with or into other software) will be located, used, or distributed by Licensee.

21.5 Amendments to the Agreement

Except as otherwise expressly provided herein, any provision of this Agreement may be amended and the observance of any provision of this Agreement may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the written consent of the Parties. HOWEVER, IT IS THE INTENTION OF THE PARTIES THAT THIS AGREEMENT SHALL CONTROL OVER ADDITIONAL OR DIFFERENT TERMS OF ANY PURCHASE ORDER, CONFIRMATION, INVOICE, OR SIMILAR DOCUMENT, EVEN IF ACCEPTED IN WRITING BY BOTH PARTIES, AND THAT WAIVERS AND AMENDMENTS SHALL BE EFFECTIVE ONLY IF MADE BY NON-

PREPRINTED AGREEMENTS CLEARLY UNDERSTOOD BY BOTH PARTIES TO BE AN AMENDMENT OR WAIVER.

21.6 Governing Law, Jurisdiction and Disputes

This Agreement shall be governed and construed in all respects in accordance with the substantive laws of the United States and the State of _____ without regard to the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act, however designated. Unless otherwise elected by Company in writing for a particular instance (which Company may do at its option), the sole jurisdiction and venue for actions related to the subject matter of this Agreement shall be the appropriate state and U.S. federal courts having within their jurisdiction the location of Company's principal place of business.

[*Mindful of the high costs of litigation, not only in terms of dollars but also in terms of time and energy, and given the Parties' intent to form a mutually satisfactory long-term relationship, the Parties intend to and do hereby establish the following dispute resolution procedure to be followed in the event any controversy designated by either Party's project manager as "highly significant" should arise out of this Agreement.*[49]

If a controversy or claim determined by either Party's project manager to be "highly significant" should arise, the Parties' respective project managers shall meet [in person] at least once and attempt to resolve the matter. Either project manager may request such a meeting to be held within fourteen (14) days, at a mutually agreed time and place. If the matter is not resolved within fourteen (14) days of their first meeting or such other time as the project managers may agree, either project manager may refer the dispute to senior executives of the respective companies with authority to resolve the dispute. The project managers shall promptly prepare and exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations (including proposed offers of resolution) and attaching relevant documents. The senior executives shall meet [in person] at a mutually agreeable time and place at least once within thirty (30) days from the date of the referral. All communications and writings exchanged between the Parties as a part of the foregoing dispute resolution procedure shall be confidential and shall not be used or referred to in any binding adjudicatory process between the Parties.

[49] This provision, including the following subparagraphs, is an optional alternative dispute resolution provision. It requires the Parties to try to resolve any major disputes first between themselves (ultimately at a "senior executive" level), and then with the assistance of an outside mediation service. Such informal attempts are established as conditions precedent to the filing of a suit. This provision does not require arbitration, but could be changed to do so, depending on the Parties' thoughts on the advantages and disadvantages of arbitration.

If the matter is not resolved within thirty (30) days of the meeting of the senior executives or any mutually agreed extension, the Parties will attempt in good faith to initiate mediation of the dispute with a mutually agreeable mediator. If the Parties cannot agree on a mediator within such time, they shall agree with [[the American Arbitration Association (AAA)] or [other alternative dispute resolution service entity, such as JAMS]], [city], [state], that they wish to use [[AAA] or JAMS]] to try to mediate the dispute. [[AAA] or [JAMS]] shall provide to the Parties a list of possible mediators numbering one more than there are Parties to the dispute. Each Party may then strike one name and [[AAA] or [JAMS]] shall designate the mediator from the list of remaining names.

Any dispute arising out of this Agreement that cannot be resolved between the Parties or by mediation may, but is not required to, be settled by arbitration under the commercial arbitration rules then in force of the American Arbitration Association or any other rules or organization upon which the Parties may agree at that time. The arbitration shall be conducted in [city], [state].

Both Parties agree that a notice of arbitration, or any complaint in a court of law or equity, must be filed within [one (1) year] after the acts or occurrences supporting such a claim, but such period shall be tolled during the period the Parties attempted to informally resolve their dispute pursuant to this Section. If a Party does not file a notice of arbitration or complaint within the requisite [one (1) year] period, that claim [or those claims] shall be waived and released and the Party shall be forever barred from asserting that claims [or those claims].

In the event of a failure to resolve the dispute between the Parties or by mediation, or in the event that either Party initiates an arbitration proceeding or a court action at law or in equity to enforce the terms of this Agreement, the prevailing party to that arbitration or litigation shall be entitled to an award of its reasonable attorneys' fees, costs, and expenses, including expert witness fees from the other party(ies), in addition to any other relief to that which such prevailing party may be entitled[, but in no event may punitive damages be awarded. A Party may be deemed to be "prevailing" even if such Party is not successful on each claim or legal theory asserted by such Party].

Nothing herein shall be construed as a waiver by any Party hereto of its right to a jury trial.]

In the event that either Party commences an action at law or in equity to enforce the terms of this Agreement, the prevailing Party shall be entitled to an award of its reasonable attorneys' fees, costs, and expenses, including

expert witness fees from the other Party(ies), in addition to any other relief to which such prevailing Party may be entitled*[, but in no event may punitive damages be awarded. A Party may be deemed to be "prevailing" even if such Party is not successful on each claim or legal theory asserted by such Party].*][50]

It is the desire and intent of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular portion of this Agreement shall be adjudicated to be invalid or unenforceable, this Agreement shall not be deemed null and void and shall be deemed amended to delete the portion thus adjudicated to be invalid or unenforceable, such deletion to apply only with respect to the operation of this Agreement in that particular jurisdiction in which such adjudication is made. In the event any provisions of this Agreement relating to the time period, scope of activities, or areas of restrictions shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activities, or areas such court deems reasonable and enforceable, the time period, scope of activities, or areas of restrictions shall thereafter be deemed the maximum that such court deems reasonable and enforceable. All provisions not affected by any such invalidity shall remain in full force and effect to the fullest extent possible consistent with the intent of the Parties.

21.7 Notices

All notices, requests, demands and other communications made in connection with this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered by hand or express delivery service to the persons identified below, (b) on the date of receipt if sent by e-mail or facsimile before 4 p.m. on a business day, or on the next business day if sent after 4 p.m. on a business day, or sent on a nonbusiness day, provided in each instance a confirmation copy is sent by certified or registered mail within one day of sending the fax or the e-mail, or (c) four (4) calendar days after mailing, if mailed with proper postage, by certified or registered mail, postage prepaid, return receipt requested, addressed as specified below.

Either party may from time to time change its address by giving the other party notice of the change in accordance with this section.

If to Company:	If to Licensee:
_____	_____
_____	_____

[50] This "legal costs" provision is intended if the prior "alternative dispute resolution" provision, and subparagraphs, is not used.

_____	_____
Attn: _____	Attn: _____

[With a copy to:

_____, Esq.	_____, Esq.
_____, LLP	_____, LLP
_____	_____
_____	_____

21.8 Publicity

Licensee hereby agrees that, with Licensee's prior consent, Company may list Licensee as a client or customer of Company or a user of the Software, may display Licensee's logo(s) toward this purpose, and may publish quotations and testimonials from Licensee, its directors, partners, officers, or employees. Company agrees to promptly cease any such use of Licensee's name or logo(s) upon the written request of Licensee.

21.9 Relationship of the Parties

This Agreement does not create a partnership or joint venture relationship between the Parties, who at all times shall remain as independent contractors. Neither Party shall have the authority to enter into contracts on the other's behalf.

21.10 Severability

If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affected the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

21.11 Waiver

No waiver by either Party of any default shall be deemed as a waiver of a prior or subsequent default of the same or other provisions of this Agreement.

21.12 Integration and Amendments to Agreement

The Parties acknowledge that they have read and understand this Agreement and agree to be bound by its terms. The Parties further agree that this Agreement is the complete and exclusive statement of the agreement between Licensee and Company, and supersedes any proposal or prior agreement, oral or written, and any other communications relating to the subject matter of this

Agreement, but that as appropriate this Agreement shall be interpreted in conjunction with any Services Agreement and any maintenance agreement between them. No amendment or modification of this Agreement or any Exhibit hereto shall be valid or binding upon the parties unless stated in writing and signed by an authorized representative of each party.

21.13 Counterparts

This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives as of the Effective Date.

Company	Licensee
By: _____ Signature	By: _____ Signature
Name: _____ Printed or Typed	Name: _____ Printed or Typed
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT A

LIST OF SOFTWARE PROGRAMS, PAYMENT TERMS, TERM AND IMPLEMENTATION SCHEDULE

To

SOFTWARE LICENSE AGREEMENT

dated _____, 20___

between

"Company"

and

"Licensee"

SOFTWARE PROGRAM [*SOURCE CODE*]	LICENSE FEE [*ROYALTY*]	LICENSE TERM [*LICENSED PRODUCTSi]*	IMPLEMENTATION SCHEDULE
[Name of program]			
TOTAL:	US$		

SOFTWARE PROGRAMS INCLUDED. Upon execution of the License Agreement by the Parties, the Licensed Software shall consist initially of the programs set forth in the above schedule. The Parties may include additional Software programs in accordance with an amended schedule and the terms of this Agreement. An acceptance or confirmation by Licensee that purports to state additional or differing terms shall operate as an acceptance, but any additional or differing terms shall be deemed material alterations to which Company does not agree, and notice of Company's objection to them is hereby given.

PAYMENT TERMS
Payment Due Dates referred to in Section 9 of the License Agreement are as follows:

[*Licensee shall pay [one-fourth (25%)] of the license fee for each Licensed Software program upon execution of the Agreement (or with respect to additional Software programs, an amended Schedule A), [one-fourth (25%)] upon delivery of the initial Software programs in accordance with Section 11 of this Agreement; [one-fourth (25%)]*

upon delivery of the Specifications [or Documentation] for the earliest delivered Software program; and the balance shall be due at the completion of the acceptance testing period for the respective Software Program.]

[*Alternative payment terms.* The License Fees for the Software Program(s) shall be due on _____, 2___.]

[*Second Alternative payment terms. Company shall invoice Licensee for each Software Program ordered upon receipt of order. Company shall invoice Licensee for out-of-pocket expenses at any time after they have been incurred. No invoice under this Agreement shall be subject to credit for any period of nonuse by Licensee for any reason, including defects in the Licensed Software. Payments by Licensee shall be payable and due net 30 days of date of Company invoice.*]

[*Royalty Payment terms. The Royalty owned Company shall be calculated on a quarterly calendar basis (the "Royalty Period") and shall be payable no later than thirty (30) days after the termination of the preceding full calendar quarter, i.e., commencing on the first (1st) day of January, April, July and October, except that the first and last calendar quarters may be "short" depending on the effective date and termination date of this Agreement. A Royalty obligation shall accrue upon the sale of the Licensed Product regardless of the time of collection by Licensee or whether the Licensed Product is sold to an affiliated or related party of Licensee (in which case the sale price shall be computed as the price sold in an arms length transaction to an unaffiliated or unrelated party). A Licensed Product shall be considered "sold" when such Licensed Product is billed, invoiced, shipped, or paid for, whichever occurs first.*

Licensee shall pay to Company a Guaranteed Minimum Royalty, of _____ payable on a quarterly calendar basis with the calculated Royalty, of the preceding paragraph. The Guaranteed Minimum Royalty shall be credited on a quarterly basis against the calculated Royalty, but in no event shall the Guaranteed Minimum Royalty be credited against a calculated Royalty of a subsequent quarter.]

All payments due to Company shall be made in United States dollars paid by check drawn on a United States bank, unless otherwise agreed to in writing by Company. Late payments shall incur interest at a rate of One and One Half Percent (1½ %) per month from the date such payments were originally due.

Accepted:

[Name of Licensee]		[Name of Company]	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____

EXHIBIT B

DESIGNATED SITES AND DESIGNATED EQUIPMENT

[*To be prepared by Company and attached hereto.*]

EXHIBIT C

END USER LICENSE AGREEMENT

[*To be prepared by Company and attached hereto.*]