End-User License Agreement for Licensing of LICENSOR Software

Last Modified: May 2025

This End User License Agreement for Licensing of LICENSOR Software Products, together with all Exhibits and Sales Orders (collectively, the "Agreement"), is by and between LICENSOR, and the customer ("Licensee") identified in the applicable Sales Order for the Licensed Technology utilized by Licensee. The Sales Order is subject to the Agreement and incorporates the Agreement by this reference. This Agreement shall be effective the earlier of (1) the date Licensee accepts these terms through the Software's click-through installation process, (2) the date set forth in the Sales Order, or (3) the date Services commence (in each case, the "Effective Date"). "Party" or "Parties" shall mean, individually, Licensee or LICENSOR as the context requires and, collectively, Licensee and LICENSOR.

STATEMENT OF PURPOSE

LICENSOR has developed and is the owner of certain software and other technology that provides sophisticated and complete solutions covering the entire construction cycle, and Licensee desires to license from LICENSOR such software and technology. LICENSOR agrees to grant Licensee a license to such software and technology. In consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby covenant and agree as follows:

AGREEMENT

1. **DEFINITIONS**. For purposes of this Agreement, the terms below shall have the following meanings whenever capitalized:
   A. "Affiliate" means any entity controlling, controlled by or under common control with Licensee, where "control" is defined as (i) the ownership of at least fifty percent (50%) of the equity or beneficial interests of such entity; (ii) the right to vote for or appoint a majority of the board of directors or other governing body of such entity; or (iii) the power to exercise a controlling influence over the management or policies of the entity. For the purposes of this Agreement, the term Affiliate, unless otherwise explicitly specified in this Agreement, shall be deemed to be included as part of the definition of Licensee (as this term is defined above).
   B. "Authorized Persons" shall have the meaning specified in Section 2(a)(i)(A).
   C. "Claim(s)" shall mean any and all foreseeable or unforeseeable and alleged or actual actions, causes of action (whether in tort, agreement or strict liability, and whether in law, equity, statutory or otherwise), bodily harm or personal injury (including sickness, disease or death of any person), claims, damages (including consequential, direct, economic, exemplary, future, incidental, indirect, noneconomic, past, special and

punitive), demands, disbursements, judgments, lawsuits, legal proceedings, liability, litigation, losses (including lost income or profit), property damage (including any harm, impairment, theft, loss or loss of use), sanctions, settlement payments, costs or expenses of any nature whatsoever, whether accrued, absolute, contingent or otherwise, including, without limitation, attorneys' fees and costs (whether or not suit is brought).

D. "Confidential Information" shall have the meaning specified in Section 8(b).

E. "Delivery Date" shall have the meaning specified in Section 3(b).

F. "Disclosing Party" shall have the meaning specified in Section 8(a).

G. "Documentation" shall mean, in digital, printed or other form, the then-current technical, user, and reference manuals then made available by LICENSOR for the applicable Software.

H. "Effective Date" shall be the date specified above.

I. "Fees" shall mean, the License Fees, Software Service Agreement Fees and Services Fees, collectively.

J. "Floating License" shall mean a license to Software that allows a group of authorized users to concurrently use the Software on multiple devices, provided that the number of simultaneous users at any given time never exceeds the total number of valid Floating Licenses purchased by the Customer (first-come-first-served principle) in the applicable Sales Order. Perpetual Licenses are always Floating Licenses.

K. "Hardware" shall mean any hardware technology provided or used by LICENSOR for use with the Software or Services.

L. "Hosted Services Technology" shall have the meaning specified in Section 2(b).

M. "Hosting Services" shall have the meaning specified in Section 2(b).

N. "Indemnitee" shall have the meaning specified in Section 10(a).

O. "Intellectual Property Rights" shall mean any and all right, title and interest, arising or existing as of the Effective Date or at any time thereafter, anywhere in the world, including, but not limited to, all patent, patent registration, copyright, trademark, trade name, service mark, service name, trade secret or other proprietary right arising or enforceable under any United States federal or state law, rule or regulation, non-United States law, rule or regulation or international treaty in any technology, system, invention, discovery, knowhow process, method, information, medium or content, including, but not limited to, text, print, pictures, photographs, video, marks, logos, designs, drawings, artistic and graphical works, music, speech, computer software and documentation, any other works of authorship and any form, method or manner of expression or communication now known or hereinafter becoming known.

P. "License Fee" shall mean the license fee set forth in Section 4(a).

Q. "Licensed Technology" shall mean the Software and Documentation and any and all related Intellectual Property Rights.

R. "Licensee Systems and Materials" shall mean the license fee set forth in Section 5(a)(v).

S. "Malicious Code" shall have the meaning specified in Section 6(d).

T. "Named User License" shall mean a license to Software that is exclusive to a single named user identified by the Customer, non-transferable (except as otherwise permitted herein) to any other named user, and for use on a single device at any given time.

U. "Open-Source License Terms" shall have the meaning specified in Section 2(c)(i).

V. "Open-Source Software" shall have the meaning specified in Section 2(c)(ii).

W. "Party" or "Parties" shall have the meaning as specified above.

X. "Permitted Entity" means a corporation, company, partnership, joint venture, or other entity that: (i) Directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, Licensee where "control" means the possession, direct or indirect, of the power to direct or cause the direction of the

management and policies of such an entity, whether through the ownership of voting securities, by contract, or otherwise; and (ii) is not – and does not control, is not controlled by, and is not under common control with – any entity that competes, then or thereafter, with LICENSOR in the market for financial consolidation, reporting, planning or analytics solutions.

Y. "PII" shall have the meaning specified in Section 8(a).

Z. "Receiving Party" shall have the meaning specified in Section 7.a.

AA. "Sales Order" shall mean an order (sales order or quote) for Licensed Technology issued by LICENSOR to Licensee and accepted by Licensee.

BB. "Services" shall mean the Software Service Agreement, Hosting Services, Training Services, and Professional Services, collectively.

CC. "Software as a Service Agreement" or "SaaS Agreement" shall mean a separate agreement entered into by the parties for provision of a Software as a Service.

DD. "Software Service Agreement Fee" shall mean the support fee set forth in Section 4(b).

EE. "Software Service Agreement" shall mean the services set forth in Section 7(a).

FF. "Software Services Term" shall have the meaning specified in Section 7(a).

GG. "Software" shall mean the software described in an applicable Sales Order.

HH. "Subscription Term" shall have the meaning specified in Section 2(a)(i)(B).

II. "Territory" shall mean the territory set forth in the applicable Sales Order. In no case will the Territory be interpreted to include jurisdictions in which LICENSOR is not licensed to do business or jurisdictions in addition to those expressly set forth the applicable Sales Order.

JJ. "Training Services" shall have the meaning specified in Section 7(c).

KK. "Warranty Period" shall have the meaning set forth in Section 6(c) of this Agreement.

2. **GRANT OF RIGHTS AND RESTRICTIONS.**
    A. <u>Software License Grant</u>. From time to time during the term of this Agreement, Licensee may place orders for Licensed Technology by executing a Sales Order. Each Sales Order will identify the quantity of and type of license(s) from the following list:
        I. *Commercial License.*
            A. **Perpetual Term License**. For Sales Orders indicating a "Perpetual Term Commercial License" for the Software, unless otherwise set forth in a Sales Order or the End of Life Policy published on LICENSOR's webpage at https://sds2.com/legal/, LICENSOR hereby grants to Licensee a non-exclusive, perpetual right to install and use, and permit each Permitted Entity to install and use, the Licensed Technology according to the Documentation and within the permitted Territory, all solely for the internal business operations of Licensee and each Permitted Entity. Licensee and each Permitted Entity may permit contractors, agents and suppliers who are providing products and/or services to Licensee or Permitted Entities for Licensee's or the Permitted Entities' benefit and who are not – and do not control, are not controlled by, and are not under common control with – any entity that competes, then or thereafter, with LICENSOR in the market for financial consolidation, reporting, planning or analytics solutions ("Authorized Persons") to use the Licensed Technology for Licensee's and/or the Permitted Entities' benefit. Licensee will be liable to LICENSOR for any act or omission by a Permitted Entity or Authorized Person that, if committed or omitted by Licensee, would be a breach by Licensee of this Agreement.
            B. **Subscription Term License**. For Sales Orders indicating a "Subscription Term Commercial License" for the Software, unless

otherwise set forth in a Sales Order, LICENSOR hereby grants to Licensee a non-exclusive, time-limited right to install and use, and permit each Permitted Entity to install and use, within the permitted Territory and during the subscription term set forth in the applicable Sales Order or as described below ("Subscription Term") the Licensed Technology according to the Documentation, all solely for the internal business operations of Licensee and each Permitted Entity. Licensee and each Permitted Entity may permit contractors, agents and suppliers who are providing products and/or services to its Authorized Persons to use the Licensed Technology for Licensee's and/or the Permitted Entities' benefit. Licensee will be liable to LICENSOR for any act or omission by a Permitted Entity or Authorized Person that, if committed or omitted by Licensee, would be a breach by Licensee of this Agreement. The Subscription license can be either a Floating License or a Named user License as set forth in the Sales Order. Unless otherwise specified in an applicable Sales Order, the Subscription Term for a Subscription Term License is as follows:

   i.   **Initial Term**. The Initial Term of the Subscription Term shall be set forth in the Sales Order. If no term is specified in the Sales Order, the Initial Term shall be twelve (12) months from the Effective Date.

   ii. **ii. Automatic Renewal**. Unless otherwise set forth in the Sales Order, the Subscription Term will automatically renew for an additional 12 months on each anniversary of the Effective Date unless written notice to terminate such Subscription Term License is delivered by one Party to the other Party at least 90 days before the end of the then-current Subscription Term.

C. **Commercial License Usage Restrictions:** Each license granted under this Section 2(A) authorizes Licensee to use the Software in machine-readable form only on the number of central processing units by the limited number of users at any one time equal to the number of licenses allowed in the Sales Order. Licensee may not use the Software on more than one central processing unit at any one time and may not have more than one user access or use the Software at any one time. Users are limited to the Licensee and its employees without acquiring a separate license for such use. Licensee may use remote access technologies to access and use the Software, provided only one user at any one time is using such Software for each license held by Licensee. If the applicable Sales Order specifies one or more named users of the Customer, the licenses granted under this Section 2(A) only extend to the use by such named users, and no other employee or representative of Licensee may use the Software under such license unless such named users are changed by the Licensee in compliance with this Agreement and the Sales Order. The Named User Licenses are only available as Subscription Licenses subject to the terms herein. Unless otherwise specified in a Sales Order, Customer may only change the Named User assignment three times within the Initial Term and four times within any subsequent renewal term.

II. *Educational License.* For Sales Orders indicating an "Educational License" for the Software, unless otherwise set forth in a Sales Order, LICENSOR hereby grants to Licensee a non-exclusive, time-limited right to install and use the Licensed Technology within the permitted Territory and according to the

Documentation, all solely for educational purposes and not within a live, production environment. Licensee and its Authorized Persons may permit their instructors and students to use the Licensed Technology for Licensee's and/or the Permitted Entities' benefit. Licensee will be liable to LICENSOR for any act or omission by a Permitted Entity or Authorized Person that, if committed or omitted by Licensee, would be a breach by Licensee of this Agreement.

III.   *Evaluation License; Beta License.* For Sales Orders indicating an "Evaluation License" or "Beta License" for the Software, unless otherwise set forth in a Sales Order, LICENSOR hereby grants Licensee, at no charge, a right to use the Licensed Technology within the permitted Territory for evaluation purposes and not within a live, production environment unless specifically stated in the applicable Sales Order during the evaluation period set forth in the applicable Sales Order ("Evaluation Period"). In no event shall the software be used for commercial or production use during the Evaluation Period. It is anticipated that upon completion of the evaluation, Licensee may enter into a contract with LICENSOR to obtain a license for continued use or purchase the Software. If Licensee elects not to license or purchase the Software, or the parties are unable to agree on terms for a purchase or continuing license, then Licensee shall return to LICENSOR all Licensed Technology within ten (10) days of the expiration or termination of the Evaluation Period. Title to the Licensed Technology will, at all times, remain with LICENSOR.

IV.   *Development License; API License.*

    A.   Development License: For Sales Orders indicating a "Development License" for the Software, unless otherwise set forth in a Sales Order, LICENSOR hereby grants to Licensee a limited, nonexclusive, nontransferable, non-sublicensable, revocable, license during the Term to access and use the Software in connection Licensee's development of products and programs ("Licensee Applications"), on a[n] [limited] number of servers, workstations or machines owned, leased or controlled by Licensee, in the Territory solely for the purpose of non-commercial development of the Licensee Applications and not within a live, production environment (the "Development Purpose").

    B.   API License: For Sales Orders indicating an "API License" for the Software, unless otherwise set forth in a Sales Order, LICENSOR hereby grants to Licensee a limited, nonexclusive, nontransferable, non-sublicensable, revocable, license during the Term to use the APIs detailed in the Sales Order ("API") to (i) develop, test, and support Licensee Applications; (ii) to distribute or allow access to Licensee's integration of the APIs within Licensee Applications to end users of the Licensee Applications; and (iii) to display the content received from the APIs within Licensee Applications. Under an API License, Licensee has no right to distribute or allow access to the stand-alone APIs.

    C.   Restrictions: Licensee has no rights with respect to the Software or any portion thereof and will not use the Software, the Licensee Applications, or any portion thereof except as expressly permitted in Section 2(a)(iv)(A). Without limiting the generality of the foregoing, Licensee will not (i) modify or create derivative works of the Software or sell, lease, share, transfer, or sublicense the Software or access or access codes thereto or derive income from the use or provision of the Software, whether for direct commercial or monetary gain or otherwise, without LICENSOR's prior, express, written permission; (ii) sublicense, lease, rent, assign, distribute, repackage, rebrand, provide access to, or

otherwise transfer or disclose the Software or any portion thereof to any third party, including Licensee's Affiliates, except as expressly permitted in this Agreement; (iii) use the Software in connection with any product or software other than the Licensee Application or beyond the defined scope of use for the Licensee Application; (iv) reverse engineer, decompile, recompile, translate, update, or modify any or all of the Software without the prior written consent of LICENSOR; (v) use the Software in any manner or for any purpose that violates any law or regulation, any right of any person, including but not limited to intellectual property rights, rights of privacy, or rights of personality, or in any manner inconsistent with the terms of this Agreement; (vi) use the Software in a manner that exceeds reasonable request volume, constitutes excessive or abusive usage, or otherwise fails to comply or is inconsistent with any part of the Software documentation provided in connection with this Agreement; (vii) maintain a cache or store using any kind of storage of any set or subset of data accessed using the Software; (viii) use the Software for the purpose of building a competitive product or service or copying its features or user interface; or (ix) cause, assist or permit any third party to do any of the foregoing. Licensee shall not license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, timeshare, offer in a service bureau, or otherwise market the Licensee Applications without notice to, and written approval from, LICENSOR.

B. Hosted Services. For Sales Orders indicating LICENSOR shall be providing "Hosting Services" to host Licensee's instance(s) of the Software, unless otherwise set forth in a Sales Order, LICENSOR hereby grants to Licensee the right to access and use the hosted Services ("Hosted Services"), and any network components, software, applications, and/or hardware that comprise or are components of the Hosted Services ("Hosted Services Technology") in order to exercise its license rights to use the Software as otherwise provided in this Section 2. Licensee may permit Authorized Persons to use the Hosting Services and/or Hosted Services Technology for Licensee's and its Affiliates' benefit.

C. Open-Source Software.
    I.   The Software may contain Open-Source Software. The terms and conditions governing use of such Open-Source Software shall be in accordance with the license terms associated with such Open-Source Software ("Open Source License Terms"). Licensee shall not make the portions of the Software that are proprietary to LICENSOR or its licensors available pursuant to any Open-Source License Terms, and Licensee shall restrict each of Licensee's subcontractors and customers in the same manner.
    II.   "Open Source Software" means any software, programming or other intellectual property that is subject to (i) the GNU General Public License, GHN Library General Public License, Artistic License, BSD license, Mozilla Public License, or any similar license, including those licenses listed at www.opensource.org/licenses; or (ii) any agreement with terms requiring any intellectual property owned or licensed by a party to be (a) disclosed or distributed in source code or object code form; (b) licensed for the purpose of making derivative works; or (c) redistributable.

D. Copies. Licensee and other Authorized Persons shall be entitled to create a reasonable and limited number of copies of the Licensed Technology for archival, backup, mirroring, quality assurance and redundancy purposes only, provided such use is in strict compliance with the terms and conditions of this Agreement.

E. Documentation. At no charge to Licensee, LICENSOR will provide one full set of all Documentation for each copy of the Software provided by LICENSOR to Licensee.

3. **DELIVERY**.
    A. Delivery Terms. Unless otherwise designated by Licensee in writing, LICENSOR shall deliver the Licensed Technology electronically. For any tangible components of the Licensed Technology (authentication fobs, etc.), LICENSOR shall deliver the Licensed Technology to Licensee, and all freight, handling and similar charges or costs incurred in connection with such delivery shall be borne by LICENSOR.
    B. Delivery of Software. Regardless of the shipping method, LICENSOR shall deliver to Licensee the Licensed Technology within five (5) days of the effective date of a Sales Order or other date mutually agreed upon by the Parties in writing ("Delivery Date").
    C. License Keys. LICENSOR shall provide Licensee the license keys (hasp or hasp-less) as specified in the applicable Sales Order. LICENSOR may issue Licensee temporary, time-limited temporary license keys until such time that the applicable Fees are paid in full. In the event Licensee upgrades or replaces the Licensee Systems and Materials (as defined herein) for any reason, provided that Licensee is up to date with all applicable Fees, LICENSOR shall issue Licensee a replacement license key upon Licensee's payment of the applicable fee for replacement license keys.

End of Life. LICENSOR, in its sole discretion, may determine an end-of-life date for any Software, Licensed Technology, Hardware, or Hosted Services Technology. LICENSOR will provide notice and a description of the end-of-life processes applicable to such Software, Licensed Technology, Hardware, or Hosted Services Technology on LICENSOR's web pages under https://sds2.com/legal/, and Licensee agrees that such notice is acceptable and sufficient. Licensee agrees to the terms of such end-of-life processes as may be updated by LICENSOR from time to time. LICENSOR will give Licensee not less than 30 days advance notice of the end-of-life date for Software, Licensed Technology, Hardware, or Hosted Services Technology unless otherwise provided and subject to the terms on the LICENSOR webpage (https://sds2.com/legal/). Customer is responsible for checking such webpage regularly to view any end-of-life guidelines and restrictions. In the event that any Licensed Technology is sunset through LICENSOR's end-of-life program (as set forth on the applicable webpage), Licensees shall be required to upgrade to currently supported versions of all affected Licensed Technology, Hardware or Hosted Services Technology for continued use.

4. **FEES, PAYMENTS AND ACCOUNTING MATTERS.**
    A. License Fee. Licensee shall pay LICENSOR, License Fee for the Licensed Technology as set forth in the applicable Sales Order ("License Fee").
    B. Software Service Agreement Fee. Licensee shall pay LICENSOR, Service Fees related to Licenses under the Software License Agreement as set forth in the applicable Sales Order ("Software Service Agreement Fee").
    C. Services Fee. Licensee shall pay LICENSOR, Service Fee for Hosting Services, Training Services (as defined herein), and any other professional services ("Professional Services") set forth in the applicable Sales Order ("Services Fee").
    D. Payment Timing. LICENSOR shall invoice Licensee for the fees set forth herein in accordance with the payment schedule set forth in the applicable Sales Order. LICENSOR may invoice for License Fees, Software Service Agreement Fees, and Services Fees commencing on the Effective Date and on a yearly basis thereafter on the anniversary of the Effective Date. Unless otherwise agreed upon by the Parties in writing, Licensee shall pay all invoices within the period set forth in the applicable Sales

Order. Licensee shall reimburse LICENSOR for reasonable expenses incurred by LICENSOR. LICENSOR will provide Licensee with original or copied receipts and other documentation required by Licensee regarding such expenses for LICENSOR to receive reimbursement for such expenses.

E. <u>Taxes.</u> If LICENSOR is required to pay or collect any federal, state, local, value added, goods and services, or any other similar taxes or duties based on the Licensed Technology, or Services provided under this Agreement, then such taxes and/or duties shall be invoiced to and paid by Licensee pursuant to the terms herein; provided, however, that Licensee shall not be required to pay any taxes based on LICENSOR's net income.

5. LICENSEE'S RESPONSIBILITIES

A. Licensee shall be exclusively responsible for the supervision, management, and control of its use of the Software, including but not limited to:

  I. assuring proper machine configuration, audit controls, and operating methods;

  II. establishing adequate backup plans, based on alternate procedures and/or based on access to qualified programming personnel to diagnose program defects, in the event of a program malfunction;

  III. implementing sufficient 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 a malfunction;

  IV. taking appropriate action with its employees, by agreement or otherwise, to satisfy its obligations under this Agreement with respect to use, copying, modification, and protection and security of the Software;

  V. maintaining and updating hardware as necessary for the proper operation of the Software (the "Licensee Systems and Materials");

  VI. uninstalling and removing the Software from any Licensee Systems and Materials prior to the replacement or disposal thereof;

  VII. verifying the accuracy and adequacy of input to and output from the Software; and

  VIII. procuring and maintaining all required consents, including consents from all users related to the processing of Licensee data, including but not limited to a user's full name, username, email addresses or such other data that collected in accordance with this Agreement.

B. Failure by the Licensee to maintain hardware does not constitute breach of this Agreement, however, the Licensee may be unable to run versions of the Software that do not support that hardware.

6. WARRANTIES.

A. <u>Authorization Warranty.</u> Each party represents and warrants to the other that: (a) its execution and performance of this Agreement and the applicable Sales Order will not violate any provision of law, rule, regulation to which such party is subject; and (b) such party will comply with all laws, rules and regulations pursuant to which such party conducts its business.

B. Each party represents and warrants to the other that: (a) it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and the applicable Sales Order; (b) the execution, delivery and performance of this Agreement and the applicable Sales Order have been duly authorized by such party; (c) no approval, authorization or consent of any governmental or regulatory authority is required to be obtained by it in order for it to enter into and perform its obligations under this Agreement and the applicable Sales Order; and (d) the signatory to this Agreement and the applicable Sales Order possesses all necessary authority to enter into the Agreement and applicable Sales Order.

C. Commercial License Warranties. The following warranties shall apply to Commercial Licenses (Perpetual Term Licenses and Subscription Term Licenses):

    I. Performance Warranty. LICENSOR warrants that, when delivered, and for ninety days thereafter, Software will conform in all material respects to the Documentation ("Warranty Period").

    II. Malicious Code. LICENSOR represents and warrants that it will use commercially reasonable efforts consistent with industry practices to ensure that that the Software, when delivered, will contain no Malicious Code. "Malicious Code" means computer software, code, or other instructions intended to gain or facilitate unauthorized access to, prevent authorized access to, damage, disable, or degrade the performance of, computer systems or data. The term includes, to the extent meeting the foregoing definition, software, code, or instructions commonly referred to as "viruses," "worms," "Trojan horses," and "spyware.".

    III. Services Warranty. LICENSOR represents and warrants that the Services shall be performed in a professional and workmanlike manner and by an adequate staff knowledgeable about the Software. LICENSOR may, from time to time, suspend or limit availability of the Licensed Technology and/or Services to allow maintenance or development work to take place.

D. Non-commercial Licenses: SOFTWARE PROVIDED UNDER A NON-COMMERCIAL LICENSE (FOR E.G. EDUCATIONAL LICENSE, DEVELOPMENT LICENSE, OR EVALUATION LICENSE) IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

E. Remedy. LICENSOR'S SOLE AND EXCLUSIVE LIABILITY FOR ANY BREACH OF THE WARRANTY IN SECTION 6(c)(i) SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE LICENSED TECHNOLOGY, UNLESS, IN LICENSOR'S REASONABLE OPINION, SUCH REPAIR OR REPLACEMENT WOULD BE INADEQUATE OR IMPRACTICAL, IN WHICH CASE LICENSOR WILL REFUND A PORTION OF THE LICENSE FEE PAID FOR THE APPLICABLE SOFTWARE EQUAL TO (1) FOR ANY PERPETUAL LICENSES, THE APPLICABLE LICENSE FEES ACTUALLY PAID BY LICENSEE DEPRECIATED FROM THE DELIVERY DATE USING A STRAIGHT LINE DEPRECIATION METHOD BASED ON A THREE (3) YEAR TERM, AND (2) FOR ANY SUBSCRIPTION LICENSES, AN AMOUNT EQUAL TO THE THEN-CURRENT FEE PAID FOR SUCH LICENSE PRORATED FOR THE REMAINING MONTHS IN THE SUBSCRIPTION TERM, AND LICENSEE WILL THEREUPON CEASE ALL USE OF THE SOFTWARE AND THIS AGREEMENT WILL TERMINATE.

F. Disclaimer of Other Warranties. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, LICENSOR DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; LICENSOR DISCLAIMS ANY AND ALL IMPLIED WARRANTIES; LICENSOR PROVIDES THE SOFTWARE AND ALL ASSOCIATED GOODS AND SERVICES WITH ALL FAULTS, THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH CUSTOMER, AND LICENSOR MAKES NO WARRANTY AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OF THE SOFTWARE, GOODS, OR SERVICES, AGAINST INFRINGEMENT, OF MERCHANTABILITY, OR OF FITNESS FOR ANY PURPOSE.

7. **SOFTWARE SERVICE AGREEMENT.**

A. Software Services. During the period for ongoing software services set forth in the applicable Sales Order ("Software Services Term"), LICENSOR shall provide the

software Services applicable to the Software under its standard Software Service Agreement or "SSA" program to Licensee as set forth in Exhibit A to this Agreement ("Software Service Agreement").

B. <u>Reinstatement of Software Service Agreement.</u> In the event that Licensee terminates Services under the Software Service Agreement, provided that Licensee is not in default of this Agreement, Licensee may elect to reinstate Services under the Software Service Agreement by paying LICENSOR a fee equal to the amount Licensee would have paid for the duration of time from when Licensee terminated the Software Service Agreement to when Licensee reinstated the Software Service Agreement plus LICENSOR's then-current fees for Services under the Software Service Agreement, but no event shall any amount due hereunder exceed two (2) years' worth of back Services under the Software Service Agreement and the then-current Software Service Agreement Fee.

C. <u>Training.</u> At Licensee's request, LICENSOR shall provide to Licensee, at a site designated by LICENSOR, the training requested by Licensee at the rates set forth in the applicable Sales Order ("Training Services").

8. **CONFIDENTIAL INFORMATION.**

A. <u>Obligations.</u> Both Parties acknowledge that either Party may receive (the "Receiving Party") Confidential Information from the other Party (the "Disclosing Party") during the term of this Agreement, and such Confidential Information will be deemed to have been received in confidence and will be used only for purposes of this Agreement. The Receiving Party shall use the Disclosing Party's Confidential Information only to perform its obligations under this Agreement and disclose the Disclosing Party's Confidential Information only to the Receiving Party's personnel having a need to know the information for the purpose of this Agreement. The Receiving Party shall treat the Confidential Information as it does its own valuable and sensitive information of a similar nature and, in any event, with not less than a reasonable degree of care. Upon the Disclosing Party's written request, the Receiving Party shall return or certify the destruction of all Confidential Information, and the obligation of confidentiality shall continue for three (3) years from the expiration or termination of this Agreement; provided, however, the Receiving Party shall keep (i) any personally identifiable information ("PII") confidential in perpetuity; and (ii) any trade secrets of the Disclosing Party confidential as long as such information is deemed a trade secret.

B. <u>Definition.</u> The term "Confidential Information" includes, without limitation, (i) all information communicated by the Disclosing Party that should reasonably be considered confidential under the circumstances, notwithstanding whether it was identified as such at the time of disclosure; (ii) all information identified as confidential to which Receiving Party has access in connection with the subject matter hereof, whether before or after the Effective Date; and (iii) this Agreement, and shall include without limitation (A) all trade secrets, (B) existing or contemplated products, services, designs, technology, processes, technical data, engineering, techniques, methodologies and concepts and any information related thereto, and (C) information relating to business plans, sales or marketing methods and customer lists or requirements.

C. <u>Exceptions.</u> The obligations of either Party under this Section 7 will not apply to information that the Receiving Party can demonstrate (i) was in its possession at the time of disclosure and without restriction as to confidentiality; (ii) at the time of disclosure is readily ascertainable by the public by proper means or after disclosure becomes readily ascertainable by the public by proper means through no breach of agreement or other wrongful act by the Receiving Party; (iii) has been received from a third party without restriction on disclosure and without breach of agreement or other

wrongful act by the Receiving Party; or (iv) is independently developed by the Receiving Party without use of, or reference to, the Confidential Information of the other Party.

D. <u>Disclosure by Law.</u> In the event the Receiving Party is required by law, regulation, stock exchange requirement or legal process to disclose any of the Confidential Information, the Receiving Party agrees to (i) give Disclosing Party, to the extent not prohibited by law, advance notice prior to disclosure and give to the Disclosing Party, at the Disclosing Party's expense, such reasonable assistance as the Disclosing Party requests in seeking nondisclosure, confidential treatment, protective orders, or similar measures, and (ii) limit the disclosure to such Confidential Information as the Receiving Party reasonably believes, upon advice of counsel, is required to be disclosed.

9. TERM AND TERMINATION.

A. <u>Term.</u> This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with the terms and conditions set forth in this Agreement. Each Sales Order may specify the applicable term or Subscription Term for the Software licensed thereunder; if not otherwise specified in a Sales Order, the Subscription Term shall be as described in Section 2.A.I.B.

B. <u>Termination for Breach.</u> This Agreement and/or an applicable Sales Order may be terminated at any time by either Party if the other Party breaches any provision of this Agreement. The Party desiring to terminate shall give the breaching Party written notice of its intent to terminate this Agreement and/or the applicable Sales Order stating the nature and character of the breach and allow the breaching Party thirty (30) calendar days from the date of the notice to correct the breach. If the breach has not been corrected within the thirty (30) day notice period, this Agreement and/or the applicable Sales Order shall then be automatically terminated. Upon termination or expiration of this Agreement or the applicable Subscription Term under this Section 9(b), (i) LICENSOR shall refund (a) a portion of the License Fee paid for the applicable Software equal to (1) for any perpetual licenses, the applicable License Fees actually paid by Licensee depreciated from the Delivery Date using a straight line depreciation method based on a three (3) year term, and (2) for any subscription licenses, an amount equal to the then-current fee paid for such license prorated for the remaining months in the Subscription Term, and (b) any prepaid, unused Software Service Agreement Fees; and (ii) Licensee will cease all use of the Software. Termination under this Section 9(b) does not limit either Party from pursuing any other remedies available to such Party, including but not limited to injunctive relief.

C. <u>Termination in Event of Insolvency or Bankruptcy.</u> Either Party may terminate this Agreement upon written notice to the other Party in the event (i) the other Party files a petition for bankruptcy or is adjudicated a bankrupt; (ii) a petition in bankruptcy is filed against the other Party and such petition is not dismissed within thirty (30) calendar days; (iii) the other Party becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement for its creditors pursuant to any bankruptcy or other similar law; (iv) the other Party discontinues its business; or (v) a receiver is appointed for the other Party or its business.

D. <u>Termination for End of Life or Change of Material Terms.</u> <u>In the event that LICENSOR provides notice of an end-of-life date for</u> Software, Licensed Technology, Hardware, or Hosted Services Technology, Licensee may terminate this Agreement or the applicable Sales Order with 30 days written notice to LICENSOR, effective on the applicable end-of-life date or expiration of the 30 days' notice, whichever is later (the "Notice Period"). In the event that LICENSOR publishes revised terms of this Agreement that includes material changes to which Licensee does not agree, Licensee may, within thirty (30) days after such material change takes effect or notice of the change is received, whichever is later (the "Notice Period"), terminate this Agreement or the applicable Sales Order with 30 days written notice to LICENSOR, effective on expiration of the 30

days' notice. Upon such termination by Licensee, Licensee will cease all use of the Software. Termination under this Section 9(d) does not limit either Party from pursuing any other remedies available to such Party, including but not limited to injunctive relief.

E. <u>Survival.</u> In the event of any termination or expiration of this Agreement for any reason, all provisions of this Agreement whose meaning requires them to survive shall survive the expiration or termination of this Agreement, including, but not limited to, Sections 1, 2(c), 4, 5, 6(g), 8, 9, 10, 11 and 13.

10. INDEMNIFICATION.

A. <u>Licensee Indemnity.</u> Licensee shall indemnify, defend and hold LICENSOR, its Affiliates and their officers, directors, employees and agents harmless from and against any and all third-party claims of loss, damages, liability, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from: (a) a breach by Licensee of any term of this Agreement or a Sales Order; (b) the Licensee Systems and Materials; or (c) a claim relating to any defect in any product or service offered by Licensee, its Affiliates or any of their agents or customers.

B. <u>LICENSOR Indemnity.</u> LICENSOR will indemnify, defend, and hold harmless Licensee and each Permitted Entity from any claim by a third party that the Software infringes upon that third party's patent, copyright, trademark, or trade secret, provided that LICENSOR's obligations under this Section will be reduced to the extent that the claim arises out of, or relates to (i) goods, services, or software not supplied by LICENSOR; (ii) use of the Software in a manner not expressly authorized by this Agreement (iii) modifications to the Software (other than mere configuration as contemplated by the Documentation) made in accordance with Licensee's specifications; (iv) customizations, modifications, alterations or changes not approved in writing by LICENSOR; (v) combination of the Software with other goods, services, processes, or software where the alleged infringement would not exist but for such combination; (vi) Software that is not the most current release and version if infringement would be avoided by use of the most current release or version, (vii) Licensee's continuation of the allegedly infringing activity after being notified thereof and provided modifications that would have avoided the alleged infringement.

C. <u>Indemnification Procedure.</u> The party claiming indemnification shall: (a) notify the indemnifying party of any claim in respect of which the indemnity may apply; (b) relinquish control of the defense of the claim to the indemnifying party; and (c) provide the indemnifying party with all assistance reasonably requested in defense of the claim. The indemnifying party shall be entitled to settle any claim without the written consent of the indemnified party so long as such settlement only involves the payment of money by the indemnifying party and in no way affects any rights of the indemnified party. The indemnities set forth herein shall not apply to the negligence of the indemnified party.

D. <u>Infringement Remedies.</u> If the Software is held by a court of competent jurisdiction to constitute an infringement or the use of the Software is enjoined, or if LICENSOR reasonably believes that either might occur, LICENSOR may, at its option (in addition to, and not in lieu of, LICENSOR's obligations under Section 10(a)), (i) procure for Licensee the right to continue use of the Software; (ii) provide a modification to the Software so that its use becomes non-infringing; (iii) replace the Software with software that is substantially similar in functionality and performance; or (iv) if none of the foregoing alternatives is reasonably available to LICENSOR, LICENSOR may refund to Licensee such Software Service Agreement Fees as Licensee has by then paid but that LICENSOR has not earned by performance or the passage of time, and refund (a) a portion of the License Fee paid for the applicable Software equal to (1) for any perpetual licenses, the applicable License Fees actually paid by Licensee depreciated from the Delivery Date using a straight line depreciation method based on a three (3) year term, and (2) for any subscription licenses, an amount equal to the then-current

fee paid for such license prorated for the remaining months in the Subscription Term, and (b) any prepaid, unused Software Service Agreement Fees, whereupon Licensee will cease using the Software and destroy or return the Software to LICENSOR and this Agreement will terminate.

E. <u>Sole Remedy.</u> This Section 10 states LICENSOR's sole obligation, and Licensee's exclusive remedy, for any third-party infringement claim.

11. **LIMITATION OF LIABILITY. EXCEPT TO THE EXTENT OF LICENSEE'S PAYMENT OBLIGATIONS OR VIOLATION OF THE LICENSE TERMS IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OR LOSS OF GOODWILL, DATA OR PROFITS, OR COST OF COVER. THE TOTAL LIABILITY OF LICENSOR FOR ANY REASON, SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO LICENSOR BY LICENSEE UNDER THE SALES ORDER APPLICABLE TO THE EVENT GIVING RISE TO SUCH ACTION DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE LIMITS ON LIABILITY IN THIS SECTION SHALL APPLY IN ALL CASES INCLUDING IF THE APPLICABLE CLAIM ARISES OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR STRICT PRODUCT LIABILITY, AND EVEN IF THE PARTY HAS BEEN ADVISED THAT SUCH DAMAGES ARE POSSIBLE OR FORESEEABLE.**

12. **PRIVACY AND DATA SECURITY.** Vendor and Licensee shall abide by the provisions set forth in Exhibit B with respect to the processing of personal data in connection with the services or the software.

13. **GENERAL.**

A. <u>Assignment.</u> Assignment. Licensee may not assign this Agreement, or any of its respective rights or obligations hereunder, without the prior written consent of LICENSOR, which may be granted or withheld in its sole discretion. Notwithstanding the foregoing, Licensee may not assign any right or obligation under this Agreement to any person who is – or who controls, is controlled by, or is under common control with – any entity that competes, then or thereafter, with LICENSOR or results in any such person becoming an otherwise authorized user of the Licensed Materials. For purposes of this Section 13(a), "assignment" means any assignment, whether voluntary or involuntary, or whether by operation of law, by way of merger, consolidation or sale of all or substantially all of Licensee's stock or assets or the division utilizing for the Licensed Technology, "change of control" is deemed an assignment or rights, and "merger" refers to any merger in which Licensee participates, regardless of whether it is the surviving or disappearing corporation. Subject to the foregoing, this Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and permitted assigns. If an assignment is made in violation of this Section 13(a), it is void (or they are void).

B. <u>Transfer of Licenses.</u> The licenses acquired hereunder may not be assigned, sublicensed, or otherwise transferred so as to allow the Software to be used by a person other than Licensee, including Licensee's Affiliates, without LICENSOR's prior written consent, which may be withheld in LICENSOR's sole discretion. Any consent shall not be effective until the transferee has signed LICENSOR's then current license agreement (which shall be subject to its then current Software Maintenance fees) and Licensee has paid LICENSOR the applicable Software transfer fee. In the event a transfer is completed by Licensee, but consent is not granted, or if granted the transfer fee is not paid, or the transferee does not sign the new license agreement, then this Agreement shall terminate, and the Licensee shall immediately cease using the

Software and destroy or return the Software to LICENSOR and this Agreement will terminate.

C. <u>Notices.</u> All notices, requests, demands, waivers and other communications required or permitted hereunder must be in writing and shall be deemed to have been duly given (a) when delivered by hand or confirmed facsimile transmission; (b) one (1) day after delivery by receipted overnight delivery; (c) three (3) days after being mailed by certified or registered mail, return receipt requested, with postage prepaid to the Party at the address set forth above to the attention of the person executing this Agreement, and with a copy to the attention of the legal department, or to such address and/or facsimile number as either Party shall furnish to the other Party in writing pursuant to this Section 13(c); (d) when published by LICENSOR on one or more of LICENSOR's web pages; or (e) when presented by LICENSOR to Licensee or its user via electronic mail or via a display on or within a user interface of the Software, Licensed Technology, Hardware, or Hosted Services Technology.

D. <u>Jurisdiction and Venue; Choice of Law.</u> The Parties mutually acknowledge and agree that this Agreement shall be construed and enforced in accordance with the laws of the United States of America and the State of Nebraska, without regard to its conflict-of-law provisions. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement. The Parties agree that in any dispute exclusive jurisdiction and venue shall be in the state and federal courts located in [Lancaster County, Nebraska]. The Parties mutually acknowledge and agree that they shall not raise in connection therewith, and hereby waive, any defenses based upon venue, inconvenience of forum or lack of personal jurisdiction in any action or suit brought in accordance with the foregoing. **The Parties acknowledge that they have read and understand this Section 13(d) and agree voluntarily to its terms.**

E. <u>Integrated Agreement.</u> This Agreement, including all exhibits referenced herein and any Sales Order made pursuant to this Agreement, and including any Software as a Service (SaaS) Agreement (and all Exhibits to such SaaS Agreement or other terms referenced therein), together constitutes the complete integrated agreement between the Parties concerning the subject matter hereof. All prior and contemporaneous agreements, understandings, negotiations or representations, whether oral or in writing, relating to the subject matter of this Agreement are superseded and canceled in their entirety. In the event of a conflict between the terms of this Agreement and any exhibits, the terms of this Agreement shall control. In the event of any inconsistencies between this Agreement and a Sales Order, the terms of this Agreement shall control unless the Sales Order specifically identifies the Section(s) of this Agreement that will be superseded. In the event of a conflict between the terms of this Agreement and a SaaS Agreement entered between the parties for a Software as a Service, the terms of the SaaS Agreement shall control.

F. <u>Amendments.</u> No alteration, amendment, waiver, cancellation or any other change in any term or condition of this Agreement by Licensee shall be valid or binding on LICENSOR. LICENSOR may alter the terms of this Agreement at its sole discretion upon notice to Licensee in accordance with Section 13(c). Any use by Licensee of the Software, Licensed Technology, Hardware, or Hosted Services Technology after the date of such notice in accordance with Section 13(c) will constitute Licensee's acceptance of such altered terms.

G. <u>Waiver.</u> No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly so provided in writing. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by either Party of any of the provisions of this Agreement, shall in no way be construed to be a present or future

waiver of such provisions, nor in any way affect the ability of a Party to enforce each and every such provision thereafter.

H. Severability. If any provision of this Agreement is adjudged by a court to be invalid, void or unenforceable, the Parties agree that the remaining provisions of this Agreement shall not be affected thereby, that the provision in question may be replaced by the lawful provision that most nearly embodies the original intention of the Parties, and that this Agreement shall in any event otherwise remain valid and enforceable.

I. Independent Contractors. Licensee and LICENSOR are acting hereunder as independent contractors. LICENSOR shall not be considered or deemed to be an agent, employee, joint venture or partner of Licensee. LICENSOR's personnel shall not be considered employees of Licensee, shall not be entitled to any benefits that Licensee grants its employees and shall have no authority to act or purport to act on Licensee's behalf. Neither Licensee nor LICENSOR has the right, and shall not seek, to exercise any control over the other Party. Each Party shall be solely responsible for hiring, firing, promoting, demoting, rates of pay, taxes, benefits and other terms and conditions regarding its own personnel.

J. Injunctive Relief. Unless otherwise specified in this Agreement, all rights, remedies and powers of a Party are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all other rights, remedies and powers given hereby or any laws now existing or hereafter enacted. Each Party acknowledges and agrees that if it breaches any obligations hereunder, the other Party may suffer immediate and irreparable harm for which monetary damages alone shall not be a sufficient remedy, and that in addition to all other remedies that the nonbreaching Party may have, the nonbreaching Party shall be entitled to seek injunctive relief, specific performance or any other form of relief in a court of competent jurisdiction, including, but not limited to, equitable relief, to remedy a breach or threatened breach hereof by the breaching Party.

K. Further Assurances. Each Party agrees that it shall, from and after Effective Date, execute and deliver such other documents and take such other actions as may reasonably be requested to effect the transactions contemplated hereunder.

L. Export Regulation. Licensee acknowledges the Licensed Technology may constitute or contain systems, materials, data, information or technology, the export, re-export, or release of which to certain jurisdictions or countries is prohibited or requires an export license or other governmental approval under any laws, including any applicable export laws and regulations of the U.S. Government (collectively, "Controlled Items"). Without limiting any of the other conditions, limitations, or restrictions set forth in this Agreement: (i) Licensee shall not, and shall not permit any third parties to, export (including any deemed export), re-export (including any deemed re-export), or release, directly or indirectly, any Controlled Items to a jurisdiction or country to which the export, re-export, or release of such Controlled Item is prohibited by applicable law; (ii) Licensee shall comply with all applicable laws, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting or re-exporting any Controlled Items; and (iii) Licensee shall provide prior written notice of the need to comply with such laws to any person or entity that it has reason to believe is obtaining any such Controlled Items from LICENSOR with the intent to export.

M. Interpretation. The Parties acknowledge that they have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and

include the singular and all words in any gender shall extend to and include all genders.

N. Force Majeure. Neither party shall be liable for delays and/or defaults in its performance (other than LICENSOR's obligation to pay fees) due to causes beyond its reasonable control, including, but without limiting the generality of the foregoing: acts of God or of the public enemy; fire or explosion; flood; stability or availability of the Internet; the elements; telecommunication system failure; war; technology attacks, epidemic; acts of terrorism; riots; civil commotion; malicious damage; embargoes; quarantine; viruses; strikes; lockouts; disputes with workmen or other labor disturbances; total or partial failure of transportation, utilities, delivery facilities, or supplies; acts or requests of any governmental authority; accident; breakdown of plant or machinery; default of subcontractors or suppliers; or any other cause beyond its reasonable control, whether or not similar to the foregoing.

O. Captions and Headings. The captions and headings used in this Agreement are used for convenience only and are not to be given any legal effect.

P. Publicity. Except as provided in this Section 13(p), LICENSOR will not use Licensee's trademarks or trade dress in any press release or public promotional communication. LICENSOR may include Licensee's name in a list of LICENSOR's customers that LICENSOR may provide on a confidential basis to LICENSOR's potential customers. Licensee will answer a reasonable number of inquiries by potential LICENSOR customers. Licensee may answer any such inquiry honestly and, for the avoidance of doubt, Licensee is not in any way required to confine its response to positive expressions. Licensee will consider in good faith, but need not grant, any request by LICENSOR: (i) to allow the use of Licensee's logo on LICENSOR's website and marketing materials to represent that Licensee is a LICENSOR customer; (ii) to allow LICENSOR to promote the selection of LICENSOR by Licensee; or (iii) to provide a marketing Sales Order for use in a press release and marketing materials for LICENSOR, in which case LICENSOR will provide to Licensee the press release.

Q. Nonexclusive. Each Party acknowledges and agrees that the rights granted to the other Party in this Agreement are nonexclusive and that without limiting the generality of the foregoing, nothing in this Agreement shall be deemed or construed to prohibit either Party from participating in similar business arrangements as those described herein.

R. Audit. Licensee agrees that LICENSOR or its designee may inspect Licensee's facilities, servers and computers to verify full compliance with the licenses granted under this Agreement. Such inspection may be conducted by use of remote software monitoring tools or by on-site inspection at Licensee's offices during regular business hours in a manner that does not interfere with Licensee's normal business activities. The inspection shall be subject to the confidentiality obligations in this Agreement and include, but not be limited to, an audit of the number of copies of Software used and the computers on which it is installed. The parties agree that any discrepancy in the amount owed for the Software discovered by the audit shall be promptly paid and in no case later than 30 days of discovery. If as a result of the audit it is discovered that Licensee underpaid LICENSOR by more than 5% during the term of the Agreement (or from the last audit if shorter), then Licensee shall reimburse LICENSOR expenses for such audit.

S. Usage Data. "Usage Data" means data and information related to Licensee's use of the Software or Services that is used by LICENSOR in an aggregate and anonymized manner, including to compile statistical information, performance information, and other information related to the provision and operation of the Software and Services and Licensee's interactions with the Software and Services. Notwithstanding anything to the contrary in this Agreement, LICENSOR may monitor Licensee's use of the Services and collect and compile Usage Data. As between LICENSOR and Licensee, all right, title, and interest in Usage Data, and all intellectual property rights therein, belong to

and are retained solely by LICENSOR. Licensee acknowledges that LICENSOR may compile Usage Data based on Licensee data input into the Services. Licensee agrees that LICENSOR may (i) make Usage Data publicly available in compliance with applicable law, and (ii) use Usage Data to the extent and in the manner permitted under applicable law. Such usage may include developing product analytics, analysis of user experience and interactions, and training of Artificial Intelligence systems for the improvement or development of Licensee's Software and Services.

T. Feedback. All information entered into the Software or Services or otherwise provided to LICENSOR by Licensee, its Affiliates, or its users that is in the nature of feedback, reviews, suggestions, or other evaluation or commentary on the Software or Services (the "Feedback") is the property of LICENSOR to be used by LICENSOR in any way at its sole discretion. Licensee, on behalf of itself, its Affiliates, and its users, hereby assigns to LICENSOR all Intellectual Property Rights in the Feedback.

U. Counterparts. This Agreement may be executed in counterparts or duplicate originals, all of which shall be regarded as one and the same instrument. The Parties consent to use of facsimile, electronic and/or digital signatures in the execution of this Agreement and the same shall be binding upon the Parties as if they were an original signature. Facsimile, electronic and digital copies of the Agreement, including properly executed PDF versions of the Agreement, shall be regarded as an original instrument by the Parties.

EXHIBIT A

SOFTWARE SERVICE AGREEMENT

1. **STANDARD MAINTENANCE PROGRAM.** LICENSOR will provide the services stated in this Exhibit A ("Software Service Agreement") during the applicable Software Services Term. LICENSOR may change the Services under this Software Service Agreement offered at any time, effective as of the commencement of any renewal period, provided that any such change affects substantially all similarly situated LICENSOR customers.

2. **FAILURES OF SOFTWARE TO CONFORM TO DOCUMENTATION.** LICENSOR will use commercially reasonable efforts to correct any reproducible failure of the Software to conform to its Documentation.

3. **STANDARD ONLINE AND TELEPHONE SUPPORT.**
    A. During Telephone and On-line Support Business Hours (regular business hours, Monday through Friday, except holidays), LICENSOR will provide to Licensee, by telephone or Web session, technical assistance and general support of the Software, such as providing guidance and isolating, documenting, and finding workarounds for problems or error messages.
    B. LICENSOR will provide to Licensee access to LICENSOR Website and Discussion Boards.
    C. The following items are not included in the Services under this Software Service Agreement:
        I. Copying, downloading, and installing Updates (covered under Professional Services if required, or by Management Services if Licensee and LICENSOR execute and deliver an LICENSOR Cloud Agreement);

II.   Labor to install or upgrade software (covered under Professional Services if required, or by Management Services if Licensee and LICENSOR execute and deliver an LICENSOR Cloud Agreement); and

III.   Labor to provide a deliverable solution requested by the customer. (covered under Professional Services if required, or by a separate Statement of Work).

4. **SOFTWARE UPDATES.** LICENSOR will make available to Licensee each minor and major functional version and release of the Software that LICENSOR makes available to its maintenance customers generally ("Updates"). Updates do not include any versions, releases, or future products that LICENSOR licenses separately.

5. **RETIREMENT OF RELEASES.** Services under this Software Service Agreement are provided for the current major release of the Software and the previous major release of the Software (each a "Supported Release"). LICENSOR may cease offering or providing Services for releases other than Supported Releases at any time after the first anniversary of the date upon which a release ceases to be a Supported Release.

6. **BACKUPS.** Licensees not on LICENSOR cloud services must ensure critical data has been backed up prior to LICENSOR's personnel providing any software Service.

7. **EXCLUSIONS.** LICENSOR's obligations to provide any Service will be reduced to the extent that the failure of the Software to conform to the Documentation is caused by: (i) use of the Software other than in accordance with this Agreement or the Documentation; (ii) modification of the Software or any part thereof other than by LICENSOR or with LICENSOR's written approval; or (iii) Licensee failure to accept or implement an Update proffered by LICENSOR that would cause the Software to conform to the Documentation.

EXHIBIT B

DATA PROTECTION ADDENDUM

This Data Protection Addendum (this "Addendum") dated as of the Effective Date forms part of the End User License Agreement for Licensing of LICENSOR Software Licensed Technology (the "Principal Agreement") between LICENSOR and Licensee. In consideration of their mutual promises to one another, the parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Principal Agreement (collectively, the "Agreement").

1. **DEFINITIONS**
   A. The following definitions shall control the interpretation of this Addendum. Capitalized terms not defined herein shall have the meaning given to them in the Principal Agreement.
      I.   "Clause" has the meaning ascribed to it in Annex 1.
      II.   "Licensee Personal Data" means any personal data Processed by a Processor on behalf of a Licensee in connection with the Services.
      III.   "Data Protection Laws" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country.
      IV.   "EEA" means the European Economic Area.
      V.   "EU Data Protection Laws" means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR.

VI. "GDPR" means EU General Data Protection Regulation 2016/679.

VII. "Processor" means either LICENSOR, LICENSOR's Affiliate, or a Subprocessors contracted by LICENSOR acting to fulfill LICENSOR's obligations under the Principal Agreement.

VIII. "Restricted Transfer" means one of the following transfers, but only where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses to be established under Section 11 below:

A. a transfer of Licensee Personal Data from any Licensee to a Processor; or

B. an onward transfer of Licensee Personal Data from one Processor to another Processor, or between two establishments of a single Processor.

IX. "Standard Contractual Clauses" means the Clauses in Annex 1, as they may be amended from time to time in accordance with Section 12(e).

X. "Subprocessor" means any person (including any third party but excluding an employee of LICENSOR or any of its sub-contractors in his or her individual capacity) appointed by or on behalf of LICENSOR to process Personal Data on behalf of Licensee in connection with the Principal Agreement.

B. The terms, "controller", "data subject", "member state", "personal data", "personal data breach", "processing" and "supervisory authority" shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

2. **PROCESSING OF LICENSEE PERSONAL DATA**

A. Processor shall not process Licensee Personal Data other than pursuant to Licensee's documented instructions unless processing is required by applicable Data Protection Law to which the relevant Processor is subject, in which case LICENSOR shall to the extent permitted by applicable law to inform Licensee of that legal requirement before the relevant processing of that Personal Data.

B. Licensee:

I. instructs Processor (and authorizes LICENSOR to instruct Subprocessor) to process Licensee Personal Data and in particular to transfer Licensee Personal Data to any country or territory, as is reasonably necessary for the provision of the Services and consistent with the Principal Agreement; and

II. warrants and represents that it is and will at all relevant times remain duly and effectively authorized to give the instruction set out in Section 2(b)(i) on behalf of each relevant Licensee Affiliate.

3. **LICENSOR PERSONNEL**

Processor shall take reasonable steps to ensure that access to any Licensee Personal Data in Processor's possession is strictly limited to those individuals who need to know or access the relevant Licensee Personal Data in order to perform Processor's obligations under the Principal Agreement; to ensure that all such individuals comply with all applicable Data Protection Laws in the context of that individual's duties to the Processor; and to ensure that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4. **SECURITY**

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and

freedoms of natural persons, Processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk to personal rights and freedoms presented by the relevant Licensee Personal Data. These technical and organizational measures shall include but shall not be limited to those listed in Annex 2.

5. **SUBPROCESSING**
   A. Licensee authorizes Processor to appoint (and permit each Subprocessor appointed in accordance with this Section 5 to appoint) Subprocessors in accordance with this Section 5 and any restrictions in the Principal Agreement.
   B. LICENSOR may continue to use those Subprocessors already engaged by LICENSOR as of the Effective Date.
   C. LICENSOR shall give Licensee prior written notice of the appointment of any new Subprocessor, including full details of the processing to be undertaken by the Subprocessor. If, within 10 days of its receipt of that notice, Licensee notifies LICENSOR in writing of any objections (on reasonable grounds) to the proposed appointment, then LICENSOR shall not appoint (or disclose any Licensee Personal Data to) that proposed Subprocessor until reasonable steps have been taken to address any objections raised by Licensee has been provided with a reasonable written explanation of the steps taken.
   D. With respect to each Subprocessor, LICENSOR shall:
      I. before the Subprocessor first Processes Licensee Personal Data (or, where relevant, in accordance with Section 5(b)), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Licensee Personal Data required by the Principal Agreement;
      II. ensure that the arrangement between on the one hand LICENSOR or the relevant intermediate Subprocessor, and on the other hand the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Licensee Personal Data as those set out in this Addendum and which meet the requirements of Article 28(3) of the GDPR;
      III. provide to Licensee for review such copies of the Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this Addendum) as Licensee may request from time to time.
   E. LICENSOR shall ensure that each Subprocessor performs the obligations under Sections 2(a), 3, 4, 6(a), 7(b), 8 and 10(a), as they apply to processing of Licensee Personal Data carried out by that Subprocessor, as if it were party to this Addendum in place of LICENSOR.

6. **DATA SUBJECT RIGHTS**
   A. LICENSOR shall implement appropriate technical and organizational measures, insofar as is reasonably possible considering the nature of the Services, to respond to requests to exercise Data Subject rights under the Data Protection Laws.
   B. LICENSOR shall promptly notify Licensee if any Processor receives a request from a Data Subject under any Data Protection Law in respect of Licensee Personal Data, and shall ensure that the Processor does not respond to that request except on the documented instructions of Licensee or the relevant Licensee Affiliate or as required by applicable Data Protection Law to which the Processor is subject, in which case LICENSOR shall to the extent permitted by applicable law inform Licensee of that legal requirement before the Processor responds to the request.
   C. Licensee shall defend, indemnify, and hold LICENSOR harmless from any claim by a Data Subject that Processor has violated Applicable Law by fulfilling its obligations under this Addendum.

7. **PERSONAL DATA BREACH**
   A. LICENSOR shall notify Licensee without undue delay if LICENSOR or any Subprocessor becomes aware of a Personal Data Breach affecting Licensee Personal Data, providing Licensee with sufficient information to allow Licensee to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.
   B. LICENSOR shall cooperate with Licensee and take such reasonable commercial steps as are directed by Licensee to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

8. **DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION**
   A. LICENSOR shall provide reasonable assistance to Licensee with any data protection impact assessments, or prior consultations with Supervising Authorities or other competent data privacy authorities, which Licensee reasonably considers to be required of Licensee by Article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to processing of Licensee Personal Data by, and taking into account the nature of the processing and information available to, the Processors.
   B. LICENSOR reserves the right to bill Licensee separately for its efforts to comply with this Section, and Licensee agrees to reimburse LICENSOR for any expenses so billed.

9. **DELETION OR RETURN OF LICENSEE PERSONAL DATA**
   A. Subject to Sections 9(b) and 9(c), LICENSOR shall promptly and in any event within 30 days of the date of cessation of any Services involving the processing of Licensee Personal Data (the "Cessation Date"), delete (or procure the deletion of) all copies of those Licensee Personal Data.
   B. Licensee may in its absolute discretion by written notice to LICENSOR within 10 days of the Cessation Date require LICENSOR to either return a complete copy of all Licensee Personal Data to Licensee by secure file transfer in such format as is reasonably notified by Licensee to LICENSOR or delete (or procure the deletion of) all other copies of Licensee Personal Data Processed by any Processor. LICENSOR shall comply with any such written request within 30 days.
   C. Each Processor may retain Licensee Personal Data to the extent required by applicable law and only to the extent and for such period as required by applicable law, provided that LICENSOR shall ensure the confidentiality of all such Licensee Personal Data and shall ensure that such Licensee Personal Data is only Processed as necessary for the purpose(s) specified in the applicable Data Protection Law requiring its storage and for no other purpose.
   D. LICENSOR shall provide written certification to Licensee that each Processor is in compliance with this Section 9 upon request.

10. **AUDIT RIGHTS**
   A. Subject to Sections 10(b) to 10(c), LICENSOR shall make available to Licensee on request all information reasonably necessary to demonstrate compliance with this Addendum, and shall allow for and contribute to audits, including inspections, by Licensee or an auditor that is required by applicable Data Protection Laws.
   B. Information and audit rights of Licensee only arise under Section 10(a) to the extent that the Principal Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Law (including, where applicable, Article 28(3)(h) of the GDPR).
   C. Licensee shall give LICENSOR reasonable notice of any audit or inspection to be conducted under Section 10(a) and shall make (and ensure that each of its mandated auditors makes) reasonable endeavors to avoid causing (or, if it cannot avoid, to

minimize) any damage, injury or disruption to the Processors' premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. A Processor need not give access to its premises for the purposes of such an audit or inspection:

    I.   to any individual unless he or she produces reasonable evidence of identity and authority;

    II.   outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and Licensee has given notice to LICENSOR that this is the case before attendance outside those hours begins; or

    III.   for the purposes of more than one audit or inspection, in respect of each Processor, in any calendar year, except for any additional audits or inspections which:

        A.   Licensee considers necessary because of genuine concerns as to LICENSOR's compliance with this Addendum; or

        B.   Licensee is required or requested to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory,

11. RESTRICTED TRANSFERS

A. Subject to Section 11(c), Licensee (as "data exporter") and each Processor, as appropriate, (as "data importer") hereby enter into the Standard Contractual Clauses in respect of any Restricted Transfer from Licensee to that Processor.

B. The Standard Contractual Clauses shall come into effect under Section 11(a) on the later of:

    I.   the data exporter becoming a party to them;

    II.   the data importer becoming a party to them; and

    III.   commencement of the relevant Restricted Transfer.

C. Section 11(a) shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which, for the avoidance of doubt, do not include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Law.

12. GENERAL TERMS

Governing law and jurisdiction

Without prejudice to Clause 7 (Mediation and Jurisdiction) and Clause 9 (Governing Law) of the Standard Contractual Clauses:

A. the parties to this Addendum hereby submit to the choice of personal jurisdiction stipulated in the Principal Agreement with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and

B. this Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the state, country, or territory stipulated for this purpose in the Principal Agreement.

Order of Precedence

C. Nothing in this Addendum reduces LICENSOR's obligations under the Principal Agreement in relation to the protection of Personal Data or permits LICENSOR to process (or permit the processing of) Personal Data in a manner which is prohibited by the Principal Agreement. In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail.

D. Subject to Section 11(b), with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Principal Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

Changes in Data Protection Laws, etc.

E. Licensee or LICENSOR may:
    I. by at least 30 days written notice to the other party, from time to time make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under Section 11(a)), as they apply to Restricted Transfers which are subject to a particular Data Protection Law, if such changes are required as a result of any change in or decision of a competent authority under the applicable Data Protection Law, in order to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and
    II. propose any other variations to this Addendum which Licensee or LICENSOR reasonably considers to be necessary to address the requirements of any Data Protection Law.

F. If Licensee or LICENSOR gives notice under Section 12(e)(i), neither Licensee nor LICENSOR shall unreasonably withhold or delay agreement to any consequential variations to this Addendum proposed by Licensee or LICENSOR to protect the Processors against additional risks associated with the variations made under Section 12(e)(i).

G. If Licensee or LICENSOR gives notice under Section 12(e)(ii), the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Licensee's or LICENSOR's notice as soon as is reasonably practicable.

H. Neither Licensee nor LICENSOR shall require the consent or approval of any Licensee Affiliate or LICENSOR Affiliate to amend this Addendum pursuant to Section 12(e), 12(f), or 12(g).

Severability

I. Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either:
    I. amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible;
    II. construed in a manner as if the invalid or unenforceable part had never been contained therein.

ANNEX 1 TO EXHIBIT B: STANDARD CONTRACTUAL CLAUSES

Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name and contact information of the data exporter: Licensee, as described in the Principal Agreement.

Name and contact information of the data importer: LICENSOR, as described in the Principal Agreement.

Telephone: 1-800-443-0782

Email: LICENSOR-Legal@APCOMPANY.com

The data exporter and the data importer (each a "party" and, collectively, "the parties") have agreed on the following Contractual Clauses (the "Clauses") in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

BACKGROUND

The data exporter has entered into a data processing addendum ("DPA") with the data importer. Pursuant to the terms of the DPA, it is contemplated that services provided by the data importer may involve the transfer of personal data to data importer. Data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such Services, including the processing of personal data incidental thereto, subject to the data importer's execution of, and compliance with, the terms of these Clauses.

1. **DEFINITIONS**
   For the purposes of the Clauses:
   A. 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established; and
   B. 'the data exporter' means the controller who transfers the personal data;
   C. 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
   D. 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
   E. 'the Subprocessor' means any processor engaged by the data importer or by any other Subprocessor of the data importer who agrees to receive from the data importer or from any other Subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
   F. 'technical and organizational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing

involves the transmission of data over a network, and against all other unlawful forms of processing.

2. **DETAILS OF THE TRANSFER**
   The details of the transfer and in particular the special categories of personal data, where applicable, are specified in Appendix 1. Appendix 1 forms an integral part of the Clauses.

3. **THIRD-PARTY BENEFICIARY CLAUSE**
   A. The data subject may enforce Clauses 3, 4(b) to 4(i), 5(a) to 5(d), 5(f) to 5(i), 6(a) and 6(b), 7, 8(b), 9, 10, 11, and 12 against the data exporter as a third-party beneficiary to this Addendum.
   B. In cases where the data exporter has factually disappeared or has ceased to exist in law, the data subject may enforce Clauses 3, 5(a) to 5(d) and 5(f), 6, 7, 8(b), 9, 10, 11, and 12 against the data importer as a third-party beneficiary to this Addendum. If a successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, the data subject may enforce the same Clauses against such entity.
   C. In cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the data subject may enforce Clauses 3, 5(a) to 5(d), 5(f), 6, 7, 8(b), 9, 10, 11, and 12 against a Subprocessor as a third-party beneficiary to this Addendum. If a successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, the data subject may enforce the same Clauses against such entity. The third-party liability of such a Subprocessor shall be limited to its own processing operations under the Clauses.
   D. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

4. **OBLIGATIONS OF THE DATA EXPORTER**
   The data exporter agrees and warrants:
   A. that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
   B. that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
   C. that the data importer will provide sufficient guarantees in respect of the technical and organizational security measures specified in Appendix 2 to this Agreement
   D. that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
   E. that it will ensure compliance with the security measures;
   F. that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its

data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

G. to forward any notification received from the data importer or any Subprocessor pursuant to Clause 5(a) or Clause 8(c) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

H. to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for Subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

I. that, in the event of Subprocessing, the processing activity is carried out in accordance with Clause 11 by a Subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

J. that it will ensure compliance with Clauses 4(a) to 4(i).

5. **OBLIGATIONS OF THE DATA IMPORTER**
The data importer agrees and warrants:

A. to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

B. that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

C. that it has implemented the technical and organizational security measures specified in Appendix 2 before processing the personal data transferred;

D. that it will promptly notify the data exporter about:
   I.   any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
   II. any accidental or unauthorized access, and
   III. any request received directly from the data subjects without responding to that request, unless it has been otherwise authorized to do so;

E. to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

F. at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

G. to make available to the data subject upon request a copy of the Clauses, or any existing contract for Subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

H. that, in the event of Subprocessing, it has previously informed the data exporter and obtained its prior written consent;

I. that the processing services by the Subprocessor will be carried out in accordance with Clause 11;

J. to send promptly a copy of any Subprocessor agreement it concludes under the Clauses to the data exporter.

6. **LIABILITY**

A. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clauses 3 or 11 by any party or Subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

B. If a data subject is not able to bring a claim for compensation in accordance with Clause 6(a) against the data exporter, arising out of a breach by the data importer or his Subprocessor of any of their obligations referred to in Clauses 3 or 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

   The data importer may not rely on a breach by a Subprocessor of its obligations in order to avoid its own liabilities.

C. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in Clauses 6(a) and 6(b), arising out of a breach by the Subprocessor of any of their obligations referred to in Clauses 3 or 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the Subprocessor agrees that the data subject may issue a claim against the data Subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the Subprocessor shall be limited to its own processing operations under the Clauses.

7. **MEDIATION AND JURISDICTION**

A. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

B. to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

C. to refer the dispute to the courts in the Member State in which the data exporter is established.

D. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

8. **COOPERATION WITH SUPERVISORY AUTHORITIES**

A. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

B. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any Subprocessor, which has the same scope and is subject to

the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

C. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any Subprocessor preventing the conduct of an audit of the data importer, or any Subprocessor, pursuant to Clause 8(b). In such a case, the data exporter shall be entitled to take the measures described in Clause 5(a).

9. **GOVERNING LAW**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

10. **VARIATION OF THE CONTRACT**

The parties undertake not to vary or modify the Clauses except as provided in the DPA. This does not preclude the parties from adding Clauses on business related issues where required as long as they do not contradict the Clause.

11. **SUBPROCESSING**

A. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the Subprocessor which imposes the same obligations on the Subprocessor as are imposed on the data importer under the Clauses. Where the Subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the Subprocessor's obligations under such agreement.

B. The prior written contract between the data importer and the Subprocessor shall also provide for a third-party beneficiary Clause similar in form and identical in substance to Clause 3(c).

C. The provisions relating to data protection aspects for Subprocessing of the contract referred to in Clause 11(a) shall be governed by the law of the Member State in which the data exporter is established.

D. The data exporter shall keep a list of Subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(i), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

12. **OBLIGATION AFTER THE TERMINATION OF PERSONAL DATA PROCESSING SERVICES**

A. The parties agree that on the termination of the provision of data processing services, the data importer and the Subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

B. The data importer and the Subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties. The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data Exporter

The data exporter is specified in the Clauses.

Data Importer

The data importer is specified in the Clauses.

Data Subjects

The personal data transferred will concern the individuals authorized to use the Software or Services pursuant to the Principal Agreement, which may include Licensee's owners, employees, and subcontractors.

Categories Of Data

The personal data transferred will include:

- Names and user identifiers
- Internet protocol address, media access control address, operating system, and other machine-identifying information
- Usage information regarding the Software and Services, which may include dates, times, and approximate locations
- Email information, including addresses and readership status
- License administration information relating to the Software and Services

Processing Operations

The personal data will be transferred in order to provide the Services as described in, and to verify Licensee's compliance with, the Principal Agreement.

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organizational security measures implemented by the data importer in accordance with Clauses 4(c) and 5(c):

The data importer shall implement and maintain the technical and organizational security measures described in Annex 2.

DRAFTING SAMPLE

ANNEX 2 TO EXHIBIT B: TECHNICAL AND ORGANIZATION SECURITY MEASURES

LICENSOR has implemented technical and organizational security measures with respect to the Services that conform to SOC2 Trust Services Principles. LICENSOR shall provide a current SOC 2 Type 2 certification report upon the execution of this Addendum. Upon request, LICENSOR shall provide a current or updated attestation certification showing the date of its validity. LICENSOR will provide Licensee a reasonable number of additional copies of such attestations upon Licensee's request. In addition:

- LICENSOR will protect all Licensee Personal Data from disclosure as set forth in the service agreements and herein, to LICENSOR employees, contractors, and Subprocessors and, unless Licensee agrees otherwise in writing, only to the extent necessary to deliver the Services.
- LICENSOR will maintain and follow mandatory employment verification requirements as described in the Principal Agreement.
- LICENSOR will provide Licensee with reasonable information requested about any security incidents or personal data breaches and the status of applicable remediation and restoration activities performed or directed by LICENSOR.
- LICENSOR will maintain or enable a reasonable level of logical separation between Licensee Personal Data and other customer data and will maintain measures reasonably designed to prevent Licensee Personal Data from being exposed to or accessed by unauthorized persons.
- LICENSOR will enlist a qualified and reputable independent third party to perform penetration testing at least annually. Such penetration testing will include, at a minimum, application security scanning, system vulnerability scanning, and manual ethical hacking activities. LICENSOR will use the appropriate due diligence to remediate any vulnerabilities found. LICENSOR will provide Licensee with attestations confirming that such testing has occurred, which will include confirmation that either no material items were found or that the appropriate remediation measures were taken.