

ACCESSDATA GROUP, LLC
GLOBAL LICENSE, SUPPORT AND SERVICES AGREEMENT
(for iBlaze, WebBlaze and Enterprise Software)

IMPORTANT NOTICE: PLEASE READ THIS ACCESSDATA GROUP, LLC (“ACCESSDATA”) GLOBAL LICENSE, SUPPORT AND SERVICES AGREEMENT (THIS “AGREEMENT”) CAREFULLY BEFORE INSTALLING, DOWNLOADING, COPYING OR USING ANY ACCESSDATA SOFTWARE. THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN THE COMPANY, ORGANIZATION OR OTHER PERSON OR ENTITY THAT HAS LICENSED THIS SOFTWARE (“CUSTOMER”) AND LICENSOR (AS DEFINED BELOW). IT HAS THE SAME EFFECT AS ANY NEGOTIATED WRITTEN AGREEMENT SIGNED BY CUSTOMER AND GOVERNS PERMITTED ACCESS TO AND INSTALLATION, COPYING AND USE OF THE SOFTWARE BY CUSTOMER AND ANY USERS. BY CLICKING TO ACKNOWLEDGE AND AGREE TO THIS AGREEMENT, OR BY INSTALLING, DOWNLOADING, OR USING THE SOFTWARE, OR BY EXECUTING THIS AGREEMENT, CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY, OR DO NOT HAVE AUTHORITY TO BIND CUSTOMER TO, THESE TERMS AND CONDITIONS THEN DO NOT INSTALL, DOWNLOAD OR USE THE SOFTWARE.

Section 1. Selected Definitions

1.1 “Affiliate” means with respect to Customer, any corporation, partnership, firm, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, governmental organization or body that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Customer, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, organization or body, whether through ownership of voting securities otherwise.

1.2 “Content” means informational content, such as operational risk listings or categories, sample report templates or illustrative databases, contained in the Software or supplied by or on behalf of Licensor to Customer with the Software.

1.3 “Documentation” means any operating manuals, user instructions, technical specifications or similar publications relating to the Use and administration of the Software by Licensor customers that are supplied with or contained in the Software provided to Customer by or on behalf of Licensor.

1.4 “Effective Date” means the earlier of (a) the date so designated in the Order Form, or (b) the date Customer first downloads or receives delivery of the Software.

1.5 “Initial Fees” mean all license fees payable for license of the Software, together with all fees for any related Services (to the extent such fees are to be paid up front pursuant to the Order) and for the

initial Support term, in each case as shown on the applicable Software Order.

1.6 “Intellectual Property Rights” means all rights, title and interests in and to the Licensed Products, including, without limitation, all copyright, patent, trade secret, trademark and other intellectual property and proprietary and moral rights related thereto, and these and any other similar rights in any jurisdiction relating to the Licensed Product.

1.7 “Licensed Products” mean the Software, any Content (whether included in the Software or separately provided), the Documentation and the Media.

1.8 “Licensor” means AccessData Group, LLC, a Delaware Limited Liability Company with its principal place of business at 384 South 400, Suite 200, Lindon, UT 84042.

1.9 “Media” means the physical media on which the Software and Documentation are recorded or printed, as provided by Licensor to Customer.

1.10 “Order” means Licensor’s then current order form for Software or its then current Services request forms, all of which refer to and are governed by this Agreement, completed and signed by Customer and Licensor.

1.11 “Services” means the services (other than Support) provided by Licensor under this Agreement, as requested by Customer, accepted by Licensor and described in one or more Orders.

1.12 “Software” means (a) the AccessData software products ordered by and provided to Customer under this Agreement, which may include the iBlaze, WebBlaze, or Enterprise products only in machine readable, executable (object code) format,

including the features, functions, designs and any Content included therein, (b) any Updates or Versions that may be provided by or on behalf of Licensor to Customer during the applicable Support Period, and (c) any complete or partial copies thereof permitted to be made by this Agreement.

1.13 “Support” means Licensor’s then current support and maintenance services program for the Software, if any, as further described in Section 8.

1.14 “Support Period” means the period during which Licensor provides support services under the terms of this Agreement and as set out in the Order Form, for which Customer has paid the applicable fee(s).

1.15 “Update” means any updates, enhancements, improvements, corrections, service packs or other modifications of or to the Software that are released by Licensor for general distribution to AccessData licensees as a part of Support during the period for which Customer has purchased Support. An Update is generally denoted by Licensor by a change to the right of the second decimal point in the Software version number (for example, Version 3.1.0 to 3.1.1).

1.16 “Use” or “Using” means (a) to install, load, download, execute, access, utilize, display or store the Software or information therein, or interact with its functionality or processing capabilities in accordance with the terms of this Agreement, and (b) to read, process and utilize the Documentation and process the Media in connection with Use of the Software in accordance with the terms of this Agreement.

1.17 “User” means each individual employee of Customer or its authorized agents or subcontractors who Uses the Licensed Products as operated or made available by or through Customer, regardless of whether such individual is actively Using the Software at any given time.

1.18 “Version” means any new version or upgrade of the Software that contains substantial and significant enhancements, or other substantial changes in functionality or performance as compared to the previous version (if any) and which is designated by a numeric change to the first position to the left or right of the first decimal point (e.g., Version 8.1.X to 8.2.X or 8.9.X to 9.0.X).

Section 2. License Grant

2.1 General. Effective upon Customer’s payment of the Initial Fees, Licensor hereby grants to Customer the following license rights with respect to the applicable Software. Licensor reserves all rights in and to the Licensed Products not expressly granted in this Agreement. With respect to any license granted

hereunder (i) Customer is solely responsible for meeting the published hardware specifications necessary for use of the software and any subsequent updates provided by Licensor as part of Support; (2) no license is herein granted with respect to source code of any kind; (3) Copyright and all other rights in the software shall remain with Licensor; and (4) Customer must reproduce any copyright or other notice marked on the software on all copies you make.

2.1.1 iBlaze License. In conjunction with the purchase of a license to the iBlaze software product, Customer may order and purchase either a Single User License or a Network License. In conjunction with the purchase of a Single User License, Customer is granted a non-exclusive, perpetual and non-transferable license to install and Use the software on a single personal computer. Software licensed under a Single User License may not be installed on a server or on more than one personal computer. In conjunction with the purchase of a Network License, Customer is granted a non-exclusive, perpetual and non-transferable license to install the software on a single server and the software may be concurrently accessed by the number of Users corresponding to the number of nodes specified on the Order.

2.1.2 WebBlaze License. In conjunction with the purchase of a license to the WebBlaze software product, Customer shall be granted a non-exclusive, perpetual and non-transferable license to install the WebBlaze software on a single server for concurrent access and Use by Users of the iBlaze software, such number of Users corresponding to the number of WebBlaze Seat Licenses specified on one or more Orders. In conjunction with the purchase of a license to the WebBlaze software hereunder, Customer will be provided with an install code that will limit Use of the software by Customer to the number of WebBlaze Seat Licenses purchased in one or more Orders.

2.1.3 Enterprise License. In conjunction with the purchase of a license to the Enterprise software product, Customer is granted a non-exclusive, perpetual and non-transferable license (i) to install the software on a single server for concurrent access and use by multiple users and (ii) to install the software on a number of Customer’s personal computers; where the number of users having concurrent access under item (i) plus the number of personal computers on which the software resides under item (ii) does not exceed the total number of user licenses purchased by Customer in one or more Orders.

2.2 Internal Use Limitation. Customer may Use and permit its Users to Use the Licensed Products only for Customer’s own internal business purposes. Other than Users authorized hereunder, Customer shall not permit any third party to Use the Licensed Products in any way whatsoever. Except as expressly authorized

by Section 3 of this Agreement, Customer shall not, and shall not permit any User to, offer or Use the Licensed Products for the benefit of any affiliated or unaffiliated third parties, including in any computer service business, service bureau arrangement, outsourcing or subscription service, time sharing or other participation arrangement.

2.3 Number of Users. Customer shall not Use, or permit the Use of, any Licensed Products by more than the maximum number of concurrent Users specified in the applicable Orders.

2.4 Copies. Customer may make a reasonable number of back-up copies of the Software for Customer's archival or disaster recovery purposes only and not for production, development, evaluation or testing purposes (other than to ensure that such back-up copies are capable of replacing the Software in case of a disaster). Such copies shall be the property of Licensor and Customer shall not remove from, deface or overprint on the original Software any Licensor copyright notices, trademarks, logos, legends or other similar proprietary designations, and shall accurately reproduce all of the same on any permitted copies. Customer shall keep exclusive possession of and control over the copies of the Licensed Product in its possession and shall effect and maintain adequate security measures to safeguard the Licensed Product from access or use by any unauthorized person or person who is not an authorized User hereunder.

2.5 Evaluation License. If any Licensed Products are provided to Customer for evaluation or trial use, Customer may use the same only for the purposes of evaluating the Software during the trial period specified in an Order or, if no period is specified, for a period of thirty (30) days from the Effective Date. All Licensed Products are provided to Customer for evaluation purposes during any such trial period on an "AS IS" basis, with no warranties or indemnities whatsoever, express or implied, orally or in writing. The preceding will supersede and apply in lieu of Sections 10, other than Section 10.5.

Section 3. Limited Third Party Use of Licensed Products

3.1 Affiliate Use. Any Customer Affiliate may Use the Licensed Products, provided that (a) such Customer Affiliate Uses the Licensed Products only for its own and/or Customer's internal business purposes strictly in accordance with all of the terms and conditions set forth in this Agreement (including, without limitation, Section 2.3 above), and (b) Customer Affiliate agrees to comply with and be bound by the terms of this Agreement. Customer hereby agrees to be fully responsible and liable for each and every Customer Affiliates' (and its Users) full compliance with the terms and conditions of this Agreement, such that any breach

of the terms of this Agreement by any such Affiliate shall be deemed a breach by Customer.

3.2 Use by Third Party Service Providers. Customer may permit Use of the Licensed Products by its third party service providers, experts or consultants, including any third parties providing Customer with outsourcing, data center management or disaster recovery services ("Service Providers"), provided that such Service Providers (a) use the Licensed Products only for Customer's internal business purposes; (b) agree to comply with and be bound by the terms of this Agreement. Customer hereby agrees to be fully responsible and liable for each and every Service Providers' (and its Users) full compliance with the terms and conditions of this Agreement, such that any breach of the terms of this Agreement by any such Services Provider shall be deemed a breach by the Customer.

Section 4. Unauthorized Use of Licensed Products

4.1 No Modification or Reverse Engineering. Customer shall not, and shall not allow any User, Affiliate or Service Provider to, (a) modify, port, adapt or translate or create any derivative works from or based on the Licensed Products, in whole or in part, (b) reverse engineer, decompile, disassemble or otherwise attempt to reduce the object code to or discover the source code of the Software, or (c) combine or merge the Software with, or incorporate it into, any other software. This prohibition shall not apply to the extent that applicable law affords Customer the right to decompile the Software if and as necessary to render it interoperable with other software licensed or used by Customer, provided that Customer first requests such decompiled information from Licensor and complies with any reasonable conditions, including payment of any reasonable fees and expenses then generally charged by Licensor to its customers for the same. Customer's Use of the Software to process Customer information or tasks and produce activity lists, schedules or reports which the Software enables and for which it is intended will not be deemed to constitute a creation of derivative works or violations of this Section 4.1.

4.2 No Transfer or Assignment. Except as may be otherwise expressly provided in Section 3, Customer shall not (a) sublicense, assign or transfer the Software in whole or in part to any third party, or (b) assign or transfer to any third party any of Customer's rights or interests in and to the Software, including through any lease, rental, subscription, lending, pledge, security interest or shared participation arrangement with or in favor of any third party.

4.3 Additional Customer Responsibilities. Customer shall maintain, and promptly provide to Licensor upon its request, accurate User lists and other reasonably detailed records regarding Use of the Software by or for Customer. If Customer becomes

aware of any unauthorized Use of all or any part of the Licensed Products, Customer shall notify Licensor promptly, providing reasonable details. Customer will remain responsible for any unauthorized Use of the Licensed Products by any individuals employed by, acting as authorized agents of or performing services for Customer or its Affiliates (including any of their respective Service Providers).

4.4 Verification Rights. Upon reasonable prior notice to Customer not more than once every twelve (12) months, Licensor may conduct an audit, using its own or third party personnel, to review that Customer's Use of the Licensed Products complies with this Agreement, including the number of licensed Users under this Agreement and the applicable Order(s). Licensor will conduct any such audit during Customer's normal business hours and in accordance with Customer's reasonable site security requirements. If any such review or any other Customer-provided information reveals that Customer has underpaid any license or Support fees, then as a non-exclusive remedy, Licensor may invoice Customer for, and Customer will pay, such additional fees as are thereby determined to be payable, based on Licensor's then effective list prices. If such underpayment exceeds five percent (5%) of the total fees paid *or payable* by Customer under this Agreement, Customer also shall reimburse Licensor for its reasonable costs actually incurred in conducting the verification.

4.5 Provisions Regarding Oracle Software. With respect to any Oracle software embedded in or provided with the Software ("Oracle Programs"), (1) Oracle or its licensor retains all ownership and intellectual property rights to the Oracle Programs, (2) Customer disclaims, to the extent permitted by applicable law, Oracle's liability for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Programs, (3) publication by Customer of any results of benchmark tests run on the Oracle Programs is prohibited, (4) the Oracle Programs are subject to a restricted license and can only be used in conjunction with the Oracle application package and Customer is not permitted to modify the Oracle Programs, (5) Oracle is not obligated to perform any obligations or incur any liability on behalf of Customer, (6) Licensor is authorized to audit Customer's use of the Oracle Programs, and Customer must provide reasonable assistance and access to information in the course of such audit and permits Licensor to report the audit results to Oracle and Licensor may assign such audit rights to Oracle, in which case Oracle shall not be responsible for any of Customer's costs incurred in cooperating with the audit, (7) Oracle is a third party beneficiary under this Agreement, (8) the application of the Uniform Computer Information Transactions Act is specifically excluded, (9) third party technology that may be

appropriate or necessary for use with some Oracle Programs is specified in the Oracle application package documentation or as otherwise notified by Licensor, such third party technology is licensed to Customer only for use with the application package under the terms of the third party license agreement specified in the application package documentation or as otherwise notified by Licensor and not under the terms of this Agreement.

Section 5. Proprietary Rights

5.1 Ownership of Licensed Products. Customer acknowledges that Licensor is and will remain the sole and exclusive owner of all Intellectual Property Rights. Customer shall have no rights, title or interest therein or thereto, other than the limited license expressly set forth in this Agreement.

5.2 Ownership of Customer Data. Nothing in this Agreement shall be construed as granting Licensor any right, title or interest in or to any Customer-provided data or other content or information input into or processed using the Licensed Products.

5.3 Ownership of Other Materials. Licensor shall be the exclusive owner of all rights, title and interests, including all Intellectual Property Rights, in and to (i) the Licensed Products, (ii) any and all translations, adaptations, developments, enhancements, improvements, Updates, Versions, customizations or other modifications or derivations of or to the Licensed Products, whether or not developed by or for the Customer, and (iii) any suggestions, ideas, enhancement requests, feedback, or recommendations provided by or on behalf of Customer. In providing any customized report template or other customized work product deliverables in connection with its provision of Services hereunder, Licensor does not and shall not be deemed to transfer to Customer any Intellectual Property Rights therein, whether as "work-for-hire" or otherwise, other than the right to Use the same in accordance with this Agreement as part of the Licensed Products. Customer hereby assigns, grants and conveys to Licensor all rights, title and interests in and to any and all such materials, effective upon their creation or communication. Customer will execute and deliver to Licensor such further assignments and take all such further actions as Licensor may reasonably request to effect or evidence the assignment to and vesting in Licensor of all such rights.

5.4 No Contest. Neither Party shall pursue any claims contesting, make any filings or registrations inconsistent with or otherwise take any actions to challenge the respective Intellectual Property Rights of the other Party as set forth in this Section 5.

Section 6. Confidential Information

6.1 Nature and Scope. All data and other information identified as confidential by either party, shall be considered confidential information of that party. Customer agrees that the Licensed Products constitute trade secrets and confidential information of Licensor. Customer and Licensor confidential information, in all forms and media and including all notes, excerpts and derivatives and all copies of any of the foregoing, are hereafter collectively referred to as "Confidential Information."

6.2 Obligations. Each party will keep all Confidential Information of the other Party strictly confidential. Each party agrees to use the same care to protect the Confidential Information of the other as it employs with similar information of its own (but in no event less than reasonable care). Neither party will disclose any Confidential Information of the other party, except that each party may disclose Confidential Information of the other to its employees, subcontractors or agents who have a need to know such information, provided that, prior to such disclosure, the disclosing party requires that each such employee, subcontractor or agent agrees to the restrictions on use and disclosure of Confidential Information set forth in this Agreement. The parties further agree that they will use Confidential Information solely for the purposes for which such information, or access to it, is provided pursuant to the terms of this Agreement. Upon any termination of this Agreement or otherwise promptly after the disclosing party's reasonable request, the receiving party shall either return to the disclosing party or destroy and certify in writing to such party the destruction of any and all Confidential Information of such party in the receiving party's possession. For the purpose of this Section 6, with respect to Customer, "party" shall include any Affiliate of Customer who has Users hereunder. In addition, Customer and its Affiliates (if applicable) shall be responsible for full compliance of any of their Service Providers' or Users' full compliance with the confidentiality obligations hereunder. This confidentiality obligation shall survive for a period of five (5) years after Customer's termination of Support of the Software.

6.3 Exceptions. Confidential Information shall not include information which is: (i) independently developed by the party without the benefit of the other's disclosure or is already known by the party at the time of disclosure; (ii) approved for release by the other's written authorization or is rightfully received by the party from a third party without any obligation of confidentiality; (iii) public knowledge without the wrongful act or breach of this Agreement by either party; or (iv) disclosed pursuant to the requirements of a governmental agency or court order.

Section 7. Order, Delivery and Payment

7.1 Order, Delivery, Installation. Customer may order Software licenses, Support (for certain software products) and/or Services by submitting one or more signed Orders to Licensor. After its acceptance of a Software Order, Licensor will either deliver the Software to Customer at the locations provided therein or permit the Customer to download the Software from an FTP site identified in such Order. Customer will be responsible for installation of the Software, except to the extent Licensor agrees to provide such Services in accordance with Section 9 and pursuant to an Order. Acceptance will be deemed to occur on Customer's receipt or downloading of Licensed Products, Customer's order or renewal of Support or Licensor's performance of Services, as applicable. Licensor will bear all risk of loss for Licensed Products until their delivery to or downloading by Customer.

7.2 Payment and Taxes. All fees and expenses are quoted and invoiced in the currency specified in the applicable Order. All invoiced amounts are due and payable by Customer within thirty (30) days after the invoice date. Fees and other charges described in the applicable Order, do not include federal, state or local sales, foreign withholding, use, property, excise, service, value added or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Customer's account. With respect to state/local sales tax, direct pay permits or a valid tax-exempt certificate must be provided to Licensor prior to the execution of this Agreement. If Licensor is required to pay Taxes, Customer shall reimburse Licensor for all such amounts. Customer hereby agrees to indemnify Licensor for any such Taxes and related costs, interest and penalties paid or payable by Licensor.

Section 8. Support

8.1 Support Term and Fees. The initial term for Support of the Software, if any, will commence on the Effective Date and continue for such initial Support Period as shown on the applicable Order. Support will automatically renew for successive one (1) year renewal terms unless and until terminated as provided in Section 8.5. Support will be provided to Customer during the initial twelve (12)-month term following the Effective Date at the price set forth in the Order. Support fees for each successive Support renewal term are payable by Customer annually in advance.

8.2 Licensor Support Obligations. Throughout the applicable Support Period, provided that Customer is not then in default of its obligations under this Agreement (including payment obligations) and subject to the exclusions set forth in Section 8.4, Licensor will provide or cause to be provided the following Support services: (a) telephone help-desk to assist Customer in its Use of the Software and respond to any reported failures of the Software to conform to Section 10.2 (provided that this support shall not be in

lieu of obtaining training with respect to the Licensed Product, for which there is a Service charge); (b) provision of such Updates and Versions as Licensor from time to time produces and distributes generally to Software licensees under Support for no additional fees; and (c) such other support services as Licensor provides generally to licensees as part of its then current Software support and maintenance program.

8.3 Customer Responsibilities. Throughout the applicable Support Period, Customer will: (a) cooperate with Licensor in investigating and seeking to identify the cause of any claimed failure of the Software to perform in accordance with this Agreement; (b) allow such other remote and/or on-site access to the Software and to Customer's systems as may be reasonably required for Licensor to perform Support activities and (c) install either the most current Version of the Software or one of the two most recent Versions of the Software. Licensor's obligation to provide the Support described in Section 8.2 above shall not apply to the extent Customer is not in full compliance with this Section 8.3(c). Customer acknowledges that the failure to timely install any Versions as required in Section 8.3(c) shall excuse Licensor's warranty and indemnity obligations herein, if any, if and to the extent any performance or infringement issues thereby would have been avoided or mitigated by Customer's installation of such Versions.

8.4 Exclusions. Licensor Support will not include: (a) resolution of problems resulting from: (i) any modification of or damage to the Software or its operating environment, (ii) Customer's failure to operate the Software in an approved hardware and software environment or otherwise in accordance with applicable Licensor Documentation, or (iii) Customer's failure to implement any Versions as required in Section 8.3(c); or (b) the provision of any Updates or Versions or other program Support described in Section 8.2, if Customer is in default with respect to payment of Support fees; or (c) Services, including but not limited to any installation, implementation and other Services.

8.5 Support Termination; Reinstatement. Either party may terminate Support under this Agreement as of the end of the initial Support Period, or as of the end of any renewal term, by written notice to the other party at least ninety (90) days prior to the end of such applicable Support Period and/or renewal term. If Customer's license to use any of the Software is terminated for any reason, Support will terminate automatically as to such Software. If Licensor terminates Support in accordance with this Section 8.5, other than in the circumstance of a breach of this Agreement by Customer, Customer will be entitled to receive a pro-rata refund of any prepaid Support fees for any period beyond the termination effective date. If Customer does not renew Support, and later desires to reinstate Support, Customer will be required to pay all fees that Customer would have paid for Support had they never terminated it.

Section 9. Services

9.1 General. Licensor offers consulting services relating to the Licensed Products, including installation and implementation services, configuration or customization of templates or reports and training for Customer personnel. Licensor will provide (a) any required initial implementation Services, as provided in the Order for the Licensed Products, and (b) all other Services, at Customer's election and following Customer's signature and Licensor's acceptance of an Order describing the nature, scope, project assumptions, fees, duration, location(s) of the covered Services, in each case in accordance with and subject to the terms and conditions of this Agreement.

9.2 Services Performance; Customer Support. In performing Services, Licensor may assign Licensor personnel, authorized agents or qualified third-party contractors who are proficient in the provision of Services relating to the Licensed Products ("Consultants"). Licensor will be responsible for the observance by such Consultants of Licensor's obligations hereunder, including the confidentiality obligations in Section 6 herein. Customer agrees to provide the information, facilities, personnel and equipment, including if applicable suitably configured computers, reasonably identified by Licensor as essential to the performance of any Services. Customer may require Licensor's personnel in performing any Services to observe at all times the safety and security policies of Customer. Customer shall advise Licensor of any hazards to the health and safety of Licensor's personnel on the Customer's premises and provide Licensor's personnel with appropriate information regarding applicable safety and security procedures.

9.3 Services Pricing. Unless otherwise provided in the applicable Order, all Services other than Support shall be provided on a time and expense/materials basis at Licensor's then current rates. Licensor reserves the right to impose a higher rate for Services performed upon the request or with the approval of Customer in excess of a forty (40) hour week or during weekend or holiday periods. Estimates are provided for Customer's information only and are not guaranteed. Customer shall pay or reimburse Licensor for all reasonable travel and other out-of-pocket expenses incurred in connection with Licensor's performance of Services hereunder.

Section 10. Limited Warranties and Disclaimers

10.1 Authority. Each party represents to the other that such party has the full corporate power and authority to enter into and perform this Agreement.

10.2 Software and Media. Licensor warrants to Customer that, for a period of ninety (90) days from

its delivery date (the “Warranty Period”), (a) the Media on which the Software is furnished will be free from material defects under normal use. Licensor’s entire liability and the Customer’s sole and exclusive remedy for breach of this Section 10.2 will be limited to either, at Licensor’s option, replacement of the Software and Media at no charge to Customer or refund of the license fee paid by Customer and termination of this Agreement. The warranties in this Section 10.2 shall not apply if, and during the period that, any Licensed Products are provided to Customer for evaluation or trial use under Section 2.4.

10.3 Services. Licensor warrants to Customer that all Services provided under this Agreement will be performed by competent personnel with appropriate experience in providing such Services.

10.4 Warranty Limitations. The preceding Licensor warranties do not apply to and, to the full extent permitted by law, Licensor shall have no responsibility for breaches of warranty to the extent arising from: (i) Customer operator errors; (ii) Customer hardware or operating system failures; (iii) the modification of the Software by any person other than Licensor (except as directed or authorized by Licensor); (iv) the combination of the Software with products or services not provided by Licensor (except as directed or authorized by Licensor); (v) use of any portion of the Software in a manner not permitted or contemplated by this Agreement or the Documentation; (vi) use of an earlier Version of some or all of the Software or use of Software without all of the Updates installed.

10.5 **DISCLAIMERS**. (a) EXCEPT FOR (i) THE WARRANTIES EXPRESSLY STATED ABOVE IN THIS SECTION 10 AND (ii) ANY WARRANTY, REPRESENTATION OR CONDITION TO THE EXTENT THE SAME CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW, LICENSOR AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES, AND EXPRESSLY DISCLAIM AND EXCLUDE ANY AND ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY OR UNDER STATUTE, COMMON LAW, CUSTOM, USAGE, COURSE OF PERFORMANCE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, LICENSOR AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS DO NOT WARRANT, AND EXPRESSLY DISCLAIM ANY REPRESENTATION OR WARRANTY, THAT THE LICENSED PRODUCTS, CONTENT, SUPPORT, SERVICES OR OTHER DELIVERABLES PROVIDED BY OR ON

BEHALF OF LICENSOR WILL SATISFY CUSTOMER’S REQUIREMENTS OR THAT THEIR USE OR OPERATION WILL BE ERROR OR DEFECT FREE OR UNINTERRUPTED, OR THAT ALL SOFTWARE DEFECTS WILL BE CORRECTED. EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 10, (A) THE LICENSED PRODUCTS ARE PROVIDED “AS IS,” WITH ALL FAULTS AND WITHOUT ANY GUARANTEES REGARDING QUALITY, PERFORMANCE, SUITABILITY, TIMELINESS, SECURITY, DURABILITY, INTEGRABILITY OR ACCURACY, AND (B) CUSTOMER ACCEPTS THE ENTIRE RISK OF AND RESPONSIBILITY FOR USE, QUALITY, PERFORMANCE, SUITABILITY AND RESULTS OF USE OF THE LICENSED PRODUCTS AND ITS OWN AUDIT APPROACH OR METHODOLOGY.

(b) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR, ANY OF ITS AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS OR SUPPLIERS OR THEIR RESPECTIVE EMPLOYEES, OFFICERS OR DIRECTORS WILL INCREASE THE SCOPE OR OTHERWISE ALTER THE TERMS OF ANY WARRANTY EXPRESSLY STATED IN THIS AGREEMENT OR CREATE ANY NEW REPRESENTATIONS, WARRANTIES OR CONDITIONS.

(c) TO THE EXTENT THAT ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS CANNOT BE FULLY DISCLAIMED AND EXCLUDED UNDER APPLICABLE LAW AS CONTEMPLATED BY SECTION 10.5(a), THEN ANY DIFFERENT OR ADDITIONAL LEGALLY REQUIRED WARRANTIES, REPRESENTATIONS OR CONDITIONS, SHALL BE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF SOFTWARE DELIVERY OR SERVICES PERFORMANCE, AS APPLICABLE.

Section 11. Limitations of Liability

11.1 Internet Exclusion. THE SOFTWARE MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. CUSTOMER ACKNOWLEDGES AND AGREES THAT LICENSOR AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE, OR (II) UNAUTHORIZED USERS (E.G. HACKERS), MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER’S DATA, WEBSITES, COMPUTERS OR NETWORKS. LICENSOR SHALL NOT BE RESPONSIBLE FOR PREVENTION OR EFFECTS OF SUCH ACTIVITIES.

11.2 Customer Responsibility; Professional Advice. CUSTOMER ASSUMES ALL RESPONSIBILITIES AND RISKS, FOR ITSELF AND ALL USERS, REGARDING: (I) ALL DATA AND INFORMATION COLLECTED, USED OR INCLUDED IN OR PROCESSED, ACCESSED OR STORED WITH THE LICENSED PRODUCTS; (II) THE PREPARATION, ACCURACY, REVIEW AND USE OF RESULTS OBTAINED THROUGH USE OF THE SOFTWARE OR ANY CONTENT, AND ANY DECISIONS OR ADVICE MADE OR GIVEN TO ANY PARTY BASED ON THE USAGE OF THE LICENSED PRODUCT. LICENSOR AND ITS AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS AND SUPPLIERS ARE NOT ENGAGED IN RENDERING LEGAL OR OTHER PROFESSIONAL OR EXPERT ADVICE OR SERVICES AND ARE NOT RESPONSIBLE FOR HOW THE LICENSED PRODUCT IS USED, THE RESULTS AND ANALYSIS DERIVED BY CUSTOMER BY USE OF THE LICENSED PRODUCT AND ANY DECISIONS THE CUSTOMER MAY TAKE BASED ON CUSTOMER'S USAGE OF THE LICENSED PRODUCT.

11.3 Damages Exclusion. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER LICENSOR OR CUSTOMER, NOR THEIR RESPECTIVE AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS OR SUPPLIERS, WILL HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSS OF SALES, PROFITS, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR ANY EXEMPLARY, PUNITIVE OR SPECIAL LOSS OR DAMAGE, EVEN IF ADVISED OF THE POSSIBILITY OF THEIR OCCURRENCE, RESULTING FROM OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LICENSED PRODUCTS, CONTENT, SUPPORT OR ANY SERVICES RENDERED HEREUNDER, OR ANY OTHER CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE CLAIM OR ACTION (WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, STATUTE OR OTHERWISE), PROVIDED, HOWEVER, THERE SHALL BE NO LIMITATION OF LIABILITY FOR CUSTOMER'S BREACH OF ANY PROVISIONS OF THIS AGREEMENT RELATING TO PROPRIETARY RIGHTS, CONFIDENTIALITY AND NON-DISCLOSURE AND NON-USE OF CONFIDENTIAL INFORMATION.

11.4 Limitations of Liability. The entire and collective liability of Licensor and its affiliates, distributors, agents, subcontractors and suppliers, arising out of or related to this Agreement, the Licensed

Products, Content, Support or Services, or any other cause whatsoever, including without limitation on account of performance or nonperformance of obligations under this Agreement, regardless of the form of the cause of action, whether in contract, tort (including without limitation negligence), statute or otherwise, shall in no event exceed the total fees paid to Licensor in the twelve-month period preceding the date such claim or cause of action first arose. The limitation of liability under this Section will be applied to the maximum extent permitted by applicable law.

11.5 Limitations Period. Any claim or cause of action arising under or otherwise relating to this Agreement, any Order, or the Licensed Products, Support, Services or other subject matter hereof or thereof, whether based on contract, tort (including negligence) or otherwise, must be commenced within one year from the date such claim or cause of action first arose.

Section 12. Term and Termination

12.1 Term. This Agreement will become effective upon the Effective Date, and will remain in force until terminated in accordance with the terms hereof.

12.2 Termination. (a) Either party may terminate this Agreement in its entirety, or in part with respect to an Order for Services, at any time upon thirty (30) days prior written notice, if the other party materially fails to comply with any of the terms and conditions of this Agreement and such failure is not cured by the end of such thirty (30)-day period. Licensor may terminate this Agreement immediately if Customer materially fails to comply with Sections 2, 3, 4, 5 or 6 of this Agreement.

(b) Unless otherwise specified by the parties in writing, either party may terminate this Agreement in part with respect to the delivery by Licensor of any of the Services upon thirty (30) days' advance written notice. Upon any such partial termination, Licensor shall advise Customer of the extent to which performance of a terminated Service has been completed through such date. Licensor shall be paid for all work performed and expenses with respect to such Service through the date of termination.

12.3 Effects of Termination. Upon termination of this Agreement for cause by Licensor, including due to violation by Customer or Affiliates (or their respective Users) of Sections 2, 3, 4, 5, 6 or 10.1 or for failure to pay any license fee or contractually required Support Fee due hereunder or any applicable Order ("Licensor For-Cause Termination"), or for any other reason, Customer shall immediately cease using the Licensed Products, return all of the Licensed Products (including all copies thereof, in whatever form) to

Licensors, and return to Licensor all of its Confidential Information in tangible form, destroy or erase any computer entries, database entries and any other recordation of Licensor Confidential Information.

12.4 Survival. In the circumstance of a Licensor For-Cause Termination, all license rights granted under Sections 2 and 3 shall be terminated, provided Sections 4, 5, 6, 7 (to the extent payment is still due by Customer) 10.4, 10.5, 11, 12, 13 and, 14 shall survive any such termination of the Agreement. In the circumstance of a Customer ceasing to maintain Support or expiration of the Agreement, Section 2, 3, 4, 5, 6, 7 (to the extent payment is still due by Customer) 10.4, 10.5, 11, 12, 13 and 14 shall survive any such termination or expiration of the Agreement.

Section 13. Governing Law and Dispute Resolution

13.1 Governing Law and Venue. The Parties consent to the application of the laws of the State of New York to govern, interpret and enforce all rights, duties and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles. The exclusive venue of any suit brought in conjunction with a dispute arising under or relating to the subject matter of this Agreement shall be a state or federal court in Salt Lake City, UT and each party is hereby subject to the jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

13.2 Injunctive Relief. Notwithstanding an agreement of the parties to submit disputes under this Agreement for resolution by arbitration, each party agrees that any actual or threatened breach by the other of its obligations under this Agreement relating to proprietary rights, confidentiality and non-disclosure of Confidential Information may cause irreparable damage for which legal remedies are inadequate, and each party agrees that the other may seek immediate injunctive or other equitable relief restraining such actual or threatened breach in any judicial forum, without the need to first secure a judgment or award and without the need to seek arbitration and follow any procedures related thereto.

13.3 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY RELATED DOCUMENTS, THEIR RESPECTIVE SUBJECT MATTER OR RELATED DEALINGS BETWEEN THE PARTIES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Section 14. Miscellaneous Provisions

14.1 Export Controls. Customer acknowledges that the Licensed Products are subject to export controls under United States laws and regulations, including the Export Administration Regulations, 15 C.F.R. Parts 730-774, and may be subject to other applicable laws and regulations in other jurisdictions relating to export, re-export, import, transfer or other disposition of software and other technology (collectively, "Export Control Laws"). From and after Licensor's delivery of the Licensed Products to Customer, Customer shall comply with any and all applicable Export Control Laws applicable to the Licensed Products.

14.2 Government Use. In the event that Customer is an agency of the United States Government or that a license granted hereunder is pursuant to a contract with either a defense or civilian agency of the United States Government, Customer acknowledges that the Software and Documentation, respectively, provided to Customer hereunder constitute commercial computer software and commercial computer software documentation developed at private expense and are subject to the terms and restrictions of this Agreement pursuant to FAR 27.405-3 and DFARS 227.7202. The contractor/manufacture is Licensor, with an address set forth on the applicable Order.

14.3 Entire Agreement. This Agreement, including its Schedules and exhibits, together with all Orders, (i) collectively constitute the entire agreement between the parties, and (ii) supersede all prior agreements, understandings, proposals and communications, oral or written, relating to the subject matter of this Agreement. Any purchase order, requisition, work order, request for proposal or other document or record prepared, issued or provided by or on behalf of Customer relating to the subject matter of this Agreement is for administrative convenience only and will have no effect in supplementing, varying or superseding any provisions of this Agreement, regardless of any acknowledgement thereof by Licensor.

14.4 Precedence. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any Order, schedule, exhibit or other attachment, the order of precedence shall be as follows: first, the body of this Agreement; then, any applicable schedules or exhibits to this Agreement; then, any Order; then any exhibits or other attachments to any Order. In the event of conflict between this Agreement and any Order, the body of this Agreement shall govern and control, except to the extent such Order makes clear that this Agreement is being amended by such Order.

14.5 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be construed or

limited, and/or deemed replaced by a revised provision, to the extent (and only to the extent) necessary to render it valid, legal and enforceable and, as nearly as possible, to reflect and achieve the parties' intentions in agreeing to the original provision. If it is not possible to so construe, limit or reform any such provision, then the invalid, illegal or unenforceable provision shall be severed from this Agreement. The remaining provisions of this Agreement shall be unaffected thereby and shall continue in full force and effect.

14.6 Amendment; Waiver. This Agreement may be modified or amended by a writing expressly identified as an Amendment and signed by both parties. Unless otherwise provided in an Amendment, Licensor reserves the right to modify, in its discretion, the terms in the body of this Agreement in connection with (i) the general release of future versions, updates, or upgrades of the Software; and/or (ii) the issuance of invoices for Services. Customer will be provided an opportunity to review and accept or reject any modified Agreement, but continued use of the Software will be subject to Customer's acceptance of such modified Agreement.

14.7 No Third Party Beneficiary. Except as expressly set forth in this Agreement, no third party is intended to be or shall be a third party beneficiary of any provision under this Agreement. Licensor and Customer shall be the only parties entitled to enforce the rights set out in this Agreement.

14.8 Assignment. Customer may not assign or transfer this Agreement or any rights or obligations hereunder, without the prior written consent of Licensor.

14.9 Force Majeure. Except for payment obligations, neither party will be liable to the other for any failure or delay in performing its obligations under this Agreement due to any cause beyond its reasonable control, including, without limitation, fire, flood, earthquake or other natural catastrophes, acts of war, terrorism or civil disobedience, governmental acts, laws or regulations, embargoes, labor strikes or difficulties, failures of third party suppliers, acts or omissions of carriers, transmitters, providers of telecommunications or Internet services, vandals, hackers, transportation stoppages or slowdowns or the inability to procure parts or materials. Each party will use reasonable efforts to give written notice to the other promptly after becoming aware of any condition or event causing any such excusable performance failure or delay.

14.10 Insurance. During any period in which it is performing Services for Customer, Licensor will maintain (a) workers' compensation with such coverage amounts at least equal to that legally required in jurisdictions in which such Services are being performed, and (b) general liability insurance in commercially reasonable amounts covering liability for

bodily injury, death and property damage. Upon written request, Licensor shall promptly provide confirmation of such insurance coverage.

14.11 Independent Contractor. Each party's relationship to the other is that of an independent contractor. Nothing in this Agreement, and no course of dealing between the parties, shall be construed to create a partnership, joint venture or employment or agency relationship between the parties or between Customer and any Licensor employee, agent or contractor. Neither party has any authority to bind, incur liability for or otherwise act on behalf of the other party, and neither party will represent or imply that it has any such authority.

14.12 Notices. All notices under this Agreement shall be in writing and shall be deemed to have been received upon personal delivery, by facsimile (followed by delivery of a hard copy thereof within five (5) business days of such facsimile), by commercial overnight courier service, or five (5) business days after mailing by certified or registered mail to the address for such party provided in the Order.

14.13 Electronic Documents. Any document in electronic format or any document reproduced from an electronic format shall not be denied legal effect, validity, or enforceability solely for that reason and shall meet any requirement to provide an original or print copy.

CUSTOMER

By: _____

Name: _____

Title: _____

Date: _____