TERMS AND CONDITIONS - MASTER SERVICES AGREEMENT (POS)

1. Methods of Access

The parties acknowledge and agree that the Software (and related support services) shall be either (i) made available to Customer by Supplier, and remotely accessed by Customer, as a service via the internet ("Subscription Services") or made available by Supplier in object code form only via a delivery format selected by Supplier.

2. Grant of Licence to Software (as applicable)

Upon and subject to receipt of payment by Supplier of the applicable Fees set out in the Order Form(s), as well as any applicable annual Fee, Supplier will grant to Customer for use in connection with its internal business operations a limited, non-exclusive, non-transferrable licence to the Software and Documentation, subject to the Permitted Use and the terms set forth in this Agreement. Customer's rights to use the Software and Documentation are limited to the Term and subject to the payment of applicable annual fees. Any Updates (provided pursuant to Section 5 (Annual Subscription / Licence and Updates) will form part of the Software and will be subject to rights granted in this Agreement. Customer acknowledges that the Software may require activation by way of an activation key on initial installation and from time to time based on certain events, including, without limitation, Updates and changes to hardware on which the Software is installed. Customer agrees that its purchase of a licence to the Software is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Supplier regarding future functionality or features. Customer acknowledges that the activation keys and internal controls in the Software do not necessarily restrict usage to the Permitted Use and do not necessarily ensure compliance with this Agreement. All rights not expressly granted to Customer hereunder are reserved by Supplier.

3. Access to Subscription Services (as applicable)

Upon and subject to receipt of payment by Supplier of the applicable Fees set out in the Order Form(s), as well as any applicable annual Fee, Supplier will make available to Customer (on a non-exclusive basis) the Subscription Services indicated in the Order Form, along with any Updates thereto (provided pursuant to Section 5 (Annual Subscription / Licence and Updates). Customer agrees that its purchase of a subscription to the Subscription Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Supplier regarding future functionality or features.

4. Permitted Use and Restrictions on Use

Customer acknowledges and agrees that the licence and/or access granted to Customer pursuant to Section 2 and Section 3 above, are subject to the following additional restrictions:

(i) Customer will use the Software and/or Subscription Services only for its own, internal business purposes and only within the Permitted Use;

(ii) Customer may permit its employees, agents and contractors to use the Software and/or Subscription Services only for purposes permitted pursuant to this Agreement and Customer will be responsible for their compliance in accordance with the terms of this Agreement;

(iii) Customer may make a reasonable number of copies of the Software, as applicable, for testing, archival and/or back-up purposes, to be used only when the primary copies of the Software are not operational. All legends, trademarks, trade names, copyright marks and other proprietary notices included in the original copies of the Software must be maintained as part of any and all testing, archival, back-up or other copies of the Software made by Customer;

(iv) Customer will not: resell, copy, frame or mirror any part or content of the Software and/or Subscription Services; make the Software and/or Subscription Services available for timesharing or service bureau purposes; or otherwise provide access to the Software and/or Subscription Services to any third party, except as such third party access is expressly agreed to between the parties in the Order Form; and

(v) Customer will not, subject to any non-waivable rights Customer may enjoy under applicable law, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying structure, ideas, know-how or algorithms relevant to the Software and/or Subscription Services or any software, documentation or data related to the Software and/or Subscription Services; interfere with or disrupt the integrity or performance of the Software and/or Subscription Services or third party data contained therein; attempt to gain unauthorized access to the Software and/or Subscription Services or its related systems or networks; modify, translate, or create derivative works based on the Software and/or Subscription Services; or remove any proprietary notices or labels.

Customer further agrees to those further restrictions, if any, on Customer's access to or use of the Software and/or Subscription Services which are indicated in the Order Form.

5. Annual Subscription / Licence and Updates

During the Term, and in consideration of the Fees being paid by Customer in accordance with the terms of this Agreement, Supplier will provide, in a timely manner and without additional charge to the annual fee, the following to Customer:

(i) Annual renewal of the right to "use" under licence and "access", as provided in Section 2 (Grant of Licence to Software) and Section 3 (Access to Subscription Services), as applicable, the Software and/or the Subscription Services, the Documentation, and related materials;

(ii) Commercially reasonable efforts to correct any Errors reported to it by Customer, provided such Errors relate to the proper functioning of the Software or the Subscription Services and have not been caused by: negligence on the part of Customer; a computer malfunction; software, hardware, data, or other materials or products not provided by Supplier; or other causes external to the Software or the Subscription Services; and further provided that Customer acknowledges and agrees that not all Errors are capable of being corrected;

(iii) Updates to the Software and/or Subscription Services that Supplier makes generally available to its customers, and documentation as reasonably necessary for the proper function and continued material conformity of the Software with the applicable Documentation. To the extent the Customer has obtained and installed an object code version of the Software pursuant to Section 2, Customer agrees to install all Updates to the Software made available by Supplier within ninety (90) days following such availability. If Customer fails to install any such Update, Supplier reserves the right to stop all implementation, training and support services until Customer installs such Update. Any programs which provides new functionality or expand the function of the Software and are regarded as New Products by Supplier, and for which Supplier separately charges other customers, are not covered by this Agreement, but may be offered to Customer for license on terms consistent with this Agreement; and

(iv) Technical support services ("Technical Support") in accordance with Section 6.

6. Technical Support

Supplier will provide Customer with reasonable Technical Support in accordance with Supplier's standard practice during the hours set out on the Order Form. As applicable and available, outside of regular office hours, non-emergency support will be charged to Customer at Supplier's then-current rates and any additional terms and conditions set forth in the Order Form. Customer acknowledges and agrees that Technical Support is intended to address specific problems experienced by Customer relating to the Subscription Services, and is not intended to train Customer's employees or to support third party products ("Other Assistance"). Supplier will advise Customer during a support session if Supplier considers such request to constitute Other Assistance. Following such notice, if Customer wishes for the support session to continue, Customer will pay for such Other Assistance

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based on Supplier's then-current rates. Should the problem reported by Customer to Supplier be the result of hardware malfunction (not relating to Hardware then subject to Hardware Maintenance Services) or other causes external to the Subscription Services, Supplier will advise Customer to have the hardware/network repaired. Support resulting from hardware/network problems and/or issues associated with third party products or services will be billed to Customer at Supplier's then-current hourly rates.

Supplier's obligation to provide support is subject to the following conditions: (i) Customer uses the Software and/or Subscription Services only in accordance with the terms and conditions of the Agreement; (ii) implementation, training, re-implementation, and system audit services must be provided by Supplier's employees or Supplier's Authorized Representatives; (iii) Customer has not modified or altered the Software or Subscription Services; (iv) Customer has not authorized independent interfacing of third party components to the Software or Subscription Services, or relevant database, particularly third party components that write to the database, without the express prior written consent of Supplier; (v) the Software and/or Subscription Services, and the equipment on which it operates, is operated in accordance with the Documentation; (vi) as applicable, the equipment on which the Software operates is in good operating condition; (vii) to the extent Customer licenses Software under this Agreement, Customer implements all Updates on a timely basis and no later than ninety (90) days subsequent to the availability of the Updates; (viii) Customer obtains, maintains, and updates, as required, third party programs and such other software as is necessary for the proper operation of the Software and/or Subscription Services; and (ix) Customer provides reasonable access to its systems (and, if applicable, such access is to be provided in accordance with the specifications set forth in the Documentation and the applicable exhibits) so as to enable Supplier to provide the technical support services, including, but not limited to, by way of telecommunications, internet or other remote access to the applicable server environment, or such other method reasonably acceptable to Supplier. All time and materials expended by Supplier resulting from Customer's breach of such conditions shall be billed to Customer at Supplier's standard time and materials rates. Support provided pursuant to this Section relates to the Software, Subscription Services and the Updates only. Unless, and only to the extent that, Supplier and Customer have expressly agreed for Supplier to provide hardware support pursuant to the Order Form, should the problems that arise be the result of unsupported hardware malfunction, Supplier will advise Customer to have the hardware/network repaired. Support resulting from unsupported hardware/network problems will be billed to Customer at Supplier's then-current hourly rates.

7. Interfaces

Interfaces to third party vendor systems may be available, as indicated in the Documentation. To the extent such third party vendor system interfaces are available, Supplier shall install or make available the interfaces as agreed between the parties on the Order Form. Customer shall act as a liaison between Supplier and any third party vendor(s) with which the Software and/or Subscription Services shall interface. Customer shall have its third party vendor available at the time that Supplier is scheduled to connect the interface and in order to assist with such connection, as required by Supplier. Transactions processed by a third party vendor system may be subject to separate licensing requirements. Customer acknowledges and agrees that it has the sole obligation to obtain, or cause its third party vendor to obtain, any and all such licences.

8. Custom Development and Enhancement Requests

This Agreement does not include any programming services for custom development or modifications. Such work, if negotiated and agreed to between Supplier and Customer, shall be the subject of a separate agreement for development services between the parties. Customer acknowledges that Supplier is not a contract development organization, but rather Supplier makes a single general release of the Software and/or Subscription Services available within specified industries. As such, Customer further acknowledges that the Software and the Subscription Services are a major and valuable assets of Supplier's business and, as such, Supplier shall have complete control of the design and development of the Software and the Subscription Services, including with respect to any enhancements and modifications. Therefore, Supplier has the right, and sole discretion, to reject any request for enhancement or modification to the Software and/or the Subscription Services by Customer.

9. Ownership of Intellectual Property

As between Supplier and Customer, Supplier retains all title, ownership, and intellectual property rights in and to the Software, the Subscription Services and Documentation, and all developments by Supplier in connection with this Agreement. Customer acknowledges and agrees that it is only licensing the right to use Supplier's Software and/or Subscription Services and Documentation and that no sale or other transfer of any title or ownership or any proprietary interest of any kind to such Software, Subscription Services or Documentation is contemplated hereunder, other than the sale of the limited licences and/or right to access as expressly granted herein.

Except as specified in Section 2 (Grant of Licence to Software), Section 3 (Access to Subscription Services) and Section 4 (Permitted Use and Restrictions on Use) or as expressly authorized in writing by Supplier and, subject to any non-waivable rights Customer may enjoy under applicable law, Customer shall not allow for any duplicates or reproduction of the Software to be made and, upon the termination of this Agreement, shall promptly (and no later than within thirty (30) days of termination) return to Supplier all originals and copies of the Software or provide validation that the Software has been permanently deleted from all of Customer's systems and destroyed.

As between Supplier and Customer, Customer shall own all right, title and interest in and to any data, including digital files, entered or submitted by Customer by means of the Software or the Subscription Services (the "Customer Data").

10. Customer Input

Supplier shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual licence to use or incorporate into the Software any Customer Input. Supplier shall have no obligation to make Customer Input an Update. Customer shall have no obligation to provide Customer Input.

11. Use of Logo for Promotional and Marketing Materials

Unless indicated otherwise in the applicable Order Form, Customer provides Supplier with permission to use its trademark, logo and trade name ("Branding") within Supplier's promotional and marketing materials. Supplier is granted no other right to the Branding and acknowledges that it shall not gain any proprietary interest in the same. Supplier is under no obligation to make use of, or to provide compensation for, the right or permission granted by Customer to the Branding. Supplier shall be the exclusive owner of all right, title, and interest, including copyright in its promotional and marketing materials. The permission to use the Branding may be terminated at any time by Customer by providing thirty (30) days' written notice to Supplier. Upon such termination, Supplier shall refrain from future use of the Branding; however, Supplier may continue to distribute and use the promotional and marketing materials where Customer's Branding has been previously printed prior to the notice of termination and where such placements cannot be discontinued or altered without Supplier incurring a penalty.

12. Third Party Components

In order to properly utilize the Subscription Services, Customer agrees it may require use of certain third party components, which if any shall be listed in the Order Form ("Third Party Components"). Customer acknowledges that Supplier will have no responsibility for the implementation or operation of such Third Party Components, unless otherwise specifically agreed between the parties on the Order Form.

13. Purchase of Products

Supplier agrees to resell to Customer the Hardware and/or Third Party Software items (collectively, "Products"), if any, indicated in the Order Form subject to the terms and conditions of this Agreement. All Products will be shipped F.O.B. origin. Unless indicated otherwise in the Order Form, Customer shall be responsible for all delivery costs. Payment by Customer of delivery costs shall be due and payable upon its receipt of Supplier's invoice.

14. Delivery of and Title to the Products

Supplier will use commercially reasonable efforts to deliver the Software, as applicable, the Products, to the applicable Customer Sites by the Delivery Date (subject to availability of the requisite Hardware, Software, Third Party

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Software and/or personnel and any required support or facilities to be provided by Customer). The Delivery Date and any indications as to the time to be taken by Supplier in dealing with any other matter in this Agreement are estimates only and the parties hereby agree that Supplier will not be liable for a delay if the same are not met.

Subject to the third paragraph of this Section 14, with respect to Products, and in the case of Third Party Software, the media on which such Products are contained and the licence thereto, all risk therein shall pass to Customer upon shipment F.O.B. from the manufacturer's facility. Supplier reserves, and Customer hereby grants to Supplier, a security interest in all Products sold under this Agreement to secure payment of all applicable Fees until the applicable Fees have been paid in full. A copy of this Agreement may be filed, or Supplier may apply for any registration, or give any notification, in connection with the security interest, with, to or on appropriate authorities or registers in any jurisdiction at any time before or after execution by Customer including a financing statement in order to perfect and/or register Supplier's security interest in the Products. Customer agrees to execute and deliver any additional document or instrument and provide all other assistance as Supplier may reasonably request from time to time to establish, perfect, register, give effect to and/or enforce Supplier's security interest in the Products applicable in Customer's place of business. Supplier shall not, unless any requirement or obligation cannot be lawfully excluded, be obliged to comply with any requirement or obligation of any law in connection with the security interest, including without limitation giving to Customer any notice of any form or making any disclosure. Customer shall maintain sufficient insurance and shall bear the responsibility of insurance for Products from the time it leaves the manufacturer's facility until the applicable Fees have been paid in full. For greater certainty, Customer acknowledges and agrees that Supplier never sells but only licenses the right to "use" its Software, Subscription Services, Documentation, and related materials, and that no sale or other transfer of any title or ownership or any proprietary interest of any kind whatsoever in or to such Software, Subscription Services, Documentation, or related materials is contemplated hereunder.

Where the governing law of this Agreement is that of England and Wales, then this this paragraph of Section 14 shall apply in place of the second paragraph of Section 14. The legal and beneficial title to the Products, or in the case of Third Party Software, legal and beneficial title to the media, shall remain vested in Supplier and shall not pass to Customer until the Fees for such Products has been paid in full and received by Supplier. Until payment in full has been received by Supplier and title to the Products passes: Supplier may require Customer to deliver up to Supplier all Products in its possession and if Customer fails to do so promptly, Supplier shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of the Products; Supplier and its agents and employees shall be entitled for such purpose at any time and without the need to give notice enter upon any property upon which the Products or any part are stored, or upon which Supplier reasonably believes them to be kept; Customer shall hold the Products as bailee and store or mark the Products in a manner reasonably satisfactory to Supplier indicating that title to the Products remains vested in Supplier; Customer shall take all reasonable care of the Products; and Customer shall insure the Products to their full replacement value, and arrange for Supplier to be noted on the policy of insurance as the loss payee. Irrespective of whether title to the Products remains vested in Supplier, risk in the Products shall pass to Customer upon delivery.

15. Hardware Rental

If, as indicated in the Order Form, Customer rents Hardware from Supplier, the Hardware shall at all times remain the property of Supplier, and the Customer shall have no right, title or interest in or to the Hardware (save the right to possession and use of the Hardware during the period for which the Customer has paid the Fees in accordance with and subject to the terms and conditions of this Agreement). The risk of loss, theft, damage or destruction of the Hardware shall pass to the Customer on Delivery. The Hardware shall remain at the sole risk of the Customer during the term for which the Hardware is in the possession, custody or control of the Customer until such time as the Hardware is redelivered to Supplier. Subject to reasonable wear and tear, the Customer shall be liable for all loss and damage caused by it or its officers, employees, agents and contractors to the Hardware (including the cost for replacement of damaged and lost parts). The Customer shall deliver up the Hardware at the end of the Rental Period or on earlier termination of this Agreement at such address as Supplier requires, or if necessary allow Supplier

or its representatives to access the applicable Customer Sites or any premises where the Hardware is located for the purpose of removing the Hardware.

16. Hardware Maintenance

If, as indicated on the Order Form, Customer desires, and Supplier agrees to provide, support for Hardware, the following terms and conditions shall apply:

(a) <u>Hardware Configuration</u>. Customer agrees that any Software licensed hereunder will be installed on Hardware compatible with Supplier's current minimum recommended specifications. Such Hardware configuration, as approved by Supplier (the "Hardware Configuration"), is more specifically listed and described in this Order Form. Customer will notify Supplier of any proposed changes to the Hardware Configuration in writing within thirty (30) days thereof. Upon Supplier's written approval of such modification, Customer's notices will constitute addenda hereto. Customer will be responsible for supplying the Hardware and procuring Hardware maintenance as required throughout the term of this Agreement. For the avoidance of doubt, Supplier will not be responsible for Hardware supply or maintenance unless expressly agreed in the Order Form. Supplier will not be responsible for providing technical support of the operating system and/or related configuration.

(b) <u>Hardware Maintenance Services</u>. In the event that Customer wishes to procure maintenance services for Hardware ("Hardware Maintenance Services") from Supplier, Customer must pay the applicable fees to Supplier for such Hardware Maintenance Services as set out in this Order Form, which may be adjusted on an annual basis by Supplier. Hardware Maintenance Services cover the maintenance of the Hardware specified in the Order Form ("Maintained Hardware") on an unscheduled, remedial, as-needed basis, inclusive of parts and labour. Supplier shall have no obligation to provide Hardware Maintenance Services in respect of any other products. Supplier reserves the right to prioritize all maintenance requests and calls in its sole judgment and discretion. Supplier shall have no obligation to provide Hardware Maintenance Services other than during the hours indicated in the Order Form, or absent such indication, during normal business hours of 9:00 a.m. to 5:00 p.m. in the time zone of Supplier's office, Monday to Friday, and not on Christmas or New Year. Supplier does not guarantee maintenance availability at certain times or within certain response times. Customer shall ensure that Supplier's personnel shall have free access to the Hardware as required in order to complete the Hardware Maintenance Services.

(c) <u>Not Covered by Hardware Maintenance</u>. Supplier shall have no obligation to provide Hardware Maintenance Services in respect of any Hardware modified by Customer or some other third party without Supplier's express prior written approval. Supplier will not be responsible for, and the Hardware Maintenance Services shall not cover, the repair of damage resulting from, or furnishing parts required as a result of, causes other than ordinary wear and tear, including, without limitation, neglect, misuse (including faulty repair or maintenance by unauthorized parties), accidents, vandalism, failure of electrical power, air conditioning, humidity control, or acts of God. Customer agrees that Supplier will not be responsible for the installation specifications (including cabling, power, space, etc.), or the installation, operation, maintenance or technical support of the Hardware unless expressly agreed in writing between Supplier and Customer. Service for older Hardware subject to Hardware Maintenance Services under this Agreement may be subject to availability of parts. In the event of non-availability of parts for particular equipment, or in the event that parts for such equipment are rare to the point that they cannot be procured on a commercial basis, replacement equipment will be offered to the Customer at a preferential price. Hardware Maintenance Services do not cover the provision or repair of electrical power supply, cabling or network issues.

17. Professional Services

Supplier will provide Customer with the professional services, if any, set forth in the Order Form(s) ("Professional Services"). Such Professional Services shall

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be scheduled as mutually agreed upon subject to Supplier's availability following receipt by Supplier of the signed Agreement and any related deposit. Should Customer require rescheduling of confirmed Professional Service dates, Supplier will make commercially reasonable efforts to accommodate Customer's request and provide Customer with the next available dates based on Supplier's then-current availability. Customer shall be responsible for paying for any Professional Services that have been scheduled and confirmed between Customer and Supplier if canceled or rescheduled by Customer less than thirty (30) days prior to the commencement of such Professional Services, unless (and only to the extent that) Supplier is able to reschedule the resource with another customer using commercially reasonable efforts.

18. Payment Terms

Customer agrees to pay to Supplier all Fees as set out in the Order Form(s). All Fees are payable in accordance with the terms set out in, and in the currency specified in, the Order Form(s). Unless otherwise indicated on the invoice, all invoices are due upon receipt. Fees stated in the Order Form are exclusive of Taxes. Other than as provided for pursuant to Section 24 (Indemnification), Supplier does not provide credits or refunds for Fees already due or paid. If Customer wishes to increase its Permitted Use of the Software or the Subscription Services, Customer must notify Supplier in advance and pay any applicable Fees.

Any invoice disputes must be initiated by Customer in good faith and in writing; Customer will be entitled to notify Supplier of any invoice dispute by the date that is thirty (30) days following the date of the applicable invoice, after which time the invoice shall be deemed to be accepted by Customer and will be due and payable in full. If Customer initiates a dispute with regard to a particular invoice, any undisputed amounts charged on such invoice will continue to be due and payable. Supplier and Customer agree to use reasonable efforts to address and attempt to resolve any invoice dispute within thirty (30) days after Supplier's receipt of Customer's notice to Supplier regarding such dispute.

With regard to any undisputed invoiced amount that is not paid when due, Supplier reserves the right to charge, and Customer agrees to pay, a late payment fee on the unpaid balance from the due date until paid (whether before or after judgment) equal to the lesser of one and one half percent (1.5%) per month, or the maximum amount allowable by law. If it is determined that Supplier properly charged any amount disputed and withheld by Customer, the late fee will be assessed and paid on the disputed, withheld amount.

Customer acknowledges that Supplier reserves the right to suspend or interrupt Customer's use of the Software or the Subscription Services, cease providing Updates, as applicable, and/or suspend delivery of technical support to Customer for any period during which any Fees due in accordance with the terms of this Agreement remain unpaid for fifteen (15) days after Supplier provides advanced written notice (including by way of email or by way of notice provided via the Software or the Subscription Services) of such unpaid Fees to Customer. In such event, Supplier shall not be precluded from exercising any additional remedies that might be available to it under the terms of this Agreement or otherwise. In the event of non-payment of the Fees, or a portion thereof, with respect to the Hardware, Customer acknowledges that Supplier may enter upon Customer's premises and without any court order or other process of law may repossess and remove the Hardware, or render the Hardware unusable without removal, either with or without notice to Customer. Customer hereby waives any trespass or right of action for damages by reason of such entry, removal or disabling. Any such repossession shall not constitute a termination of this Agreement. Supplier will not be responsible for any data which is lost by the Customer as a result of the exercise by Supplier of its rights under this Section 18.

19. Taxes; Customs

Customer will be responsible for paying all Taxes (other than taxes associated with Supplier's net income or Supplier's authority to do business in a particular jurisdiction), as well as for obtaining any necessary permissions related to the importation and use of the Software, Subscription Services, Third Party Software and/or Hardware. If Supplier has a legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, the appropriate amount shall be computed based on Customer's address listed in the Order Form and invoiced to and paid by Customer, unless Customer

provides Supplier with a valid tax exemption certificate authorised by the applicable governmental authority at least five (5) business days prior to the due date of the applicable Supplier invoice. All Fees are payable in full and without reduction or withholding for Taxes. If, for whatever reason, Customer is required by law to withhold any Taxes from Fees, Customer shall gross up its payments to Supplier so that Supplier receives Fees in full and free of any such deductions. Customer shall, upon request of Supplier, provide to Supplier proof that Taxes have been paid, if such payment is not made to Supplier directly. If Supplier pays any costs or expenses incurred in relation to any import duties, customs, formalities, permissions or other requirements, then Customer shall promptly reimburse Supplier for all such amounts in full.

20. Customer Responsibilities

(a) Project Lead / Project Team. Within a reasonable period of time following the execution of this Agreement, and prior to the commencement of installation of the Software or use of the Subscription Services, Customer shall appoint a member of its staff to act as its project lead. The project lead will serve as the main contact for Supplier's personnel in connection with any installation activities, disseminate information from Supplier to the various departments at Customer's operation, as applicable and relay any required information to Customer personnel in a timely manner. If the implementation affects multiple areas of Customer's operations, then it shall also appoint a team comprised of management level staff from those operational areas involved in the installation to act as its project team. The project lead and/or project team, as applicable, shall have primary responsibility for the coordination and execution of the installation. The project lead and/or the project team shall: (a) have a clear understanding of the general manager's or other top- ranking executive's vision and purchasing decision for the installation of the Software and shall communicate this vision to all levels of Customer's staff; (b) be familiar with and involved in Customer's daily operations; (c) be Customer's primary decision-makers, within their respective areas of operational responsibility, for any policies and procedures which may be involved in the implementation of the Software; (d) report to the general manager or other top-ranking manager as it relates to the responsibilities of installation coordination; I ensure that the minimum system requirements set forth in in the Order Form(s), related Documentation and/or the applicable exhibit have been met or exceeded; (f) serve as liaison with other third party vendors who are involved in the installation process; and (g) be present during all phases of the installation and training process to include attendance at all designated training classes and ensure attendance of staff at scheduled training sessions.

(b) Data Entry. Unless expressly agreed otherwise in the Order Form, Customer shall enter all data required for installation of the Software and/or Subscription Services and shall be responsible for the integrity of such data. Supplier shall not have any liability for any Customer data, including for data that Supplier personnel may enter in an effort to assist Customer or any errors made in such efforts to assist Customer. Supplier reserves the right to refuse to do data entry and Customer agrees that Customer is solely responsible for providing sufficient staff to perform any data entry required for the installation of the Software and/or use of the Subscription Services. Customer shall assume full responsibility for (i) the content of any database, (ii) the selection and implementation of controls on its access and use of the Software and/or Subscription Services, (iii) the security of stored data and (iv) configuration data associated with the implementation of the Software and/or Subscription Services.

(c) Care for Hardware (as applicable). During the Hardware Rental Period and/or until title in the Hardware passes to the Customer in accordance with Section 14, Customer shall: (a) ensure that the Hardware is kept on the Customer Site and operated in an appropriate, well-ventilated, dry environment while elevated from the floor; (b) ensure that the Hardware is used only for the purposes for which it is designed, and operated by trained staff in accordance with any operating instructions provided by Supplier; (c) not make any modifications or repairs to the Hardware, or remove any component(s) from the Hardware, without Supplier's prior written consent; (d) permit Supplier or its authorised representative to inspect the Hardware at all reasonable times at the applicable

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Customer Site; (e) not sell or rent the Hardware; (f) not allow the creation of any mortgage, charge, lien or other security interest with respect to the Hardware; and (g) install the Hardware in a manner that prevents it from being removed from the Customer Site.

(d) <u>Insurance</u>. During the Hardware Rental Period and/or until title in the Hardware passes to the Customer in accordance with Section 14, as applicable, Customer shall provide and maintain insurance against loss, theft, damage or destruction of the Hardware in an amount not less than the full replacement value of the Hardware, with loss payable to Supplier. Customer shall also provide and maintain comprehensive general all-risk liability insurance, including but not limited to product liability coverage, insuring Supplier and Customer with a severability of interest endorsement or its equivalent, against any and all loss or liability for damages either to persons or property or otherwise, which might result from or happen in connection with the condition, use or operation of the Hardware, with such limits and with an insurer as are satisfactory to Supplier. Each policy shall expressly provide that said insurance as to Supplier and its assigns shall not be invalidated by any act, omission or neglect of Customer and cannot be cancelled without thirty (30) days written notice to Supplier. As to each policy, Customer shall furnish to Supplier a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Section 20(d) and shall designate Supplier as loss payee and/or additional insured. Supplier shall have no obligation to ascertain the existence or adequacy of insurance, or to provide any insurance coverage for the Hardware or for Customer's benefit. If Customer fails to procure or maintain said insurance, Supplier shall have the right, but shall not be obligated, to effect such insurance, or pay such charges. In that event, Supplier shall notify Customer of such payment and Customer shall repay to Supplier the cost thereof within thirty (30) days after such notice is mailed to Customer.

(e) <u>Provision of Internet Access</u>. Customer acknowledges that: (i) the Subscription Services will be accessed via a network connection to one or more computer servers controlled by, or on behalf, of Supplier; and (ii) Customer shall be solely responsible for selecting, purchasing and properly maintaining all software, hardware, internet connections and other related services and devices necessary for Customer to gain access to and use the Subscription Services and, as applicable, the Software and the Hardware, other than any Hardware or Third Party Software which Supplier expressly agrees to provide pursuant to the Order Form. While Supplier is not responsible for the selection and performance of all such software, hardware and internet connections and related services selected by Customer, Supplier shall supply Customer with minimum hardware, system and interoperability requirements. Notwithstanding the supply of such information, Supplier does not, in any event, represent that the actual software, hardware internet connections and related services and devices selected by Customer will necessarily be compatible with the Subscription Services, the Software, the Hardware and/or any portal or other form of electronic gateway that may be required in order to enable Customer to gain access to the Subscription Services.

(f) <u>Account Reconciliation</u>. Customer acknowledges and agrees that: (i) it is Customer's sole responsibility to reconcile its accounts and to ensure that all consumer charges including, but not limited to, credit card transactions and batch transactions, are credited, via any means available to and selected by Customer, to Customer's bank account; and (ii) Supplier shall not be responsible nor assume liability, financial or otherwise, for any reconciliation efforts, use and/or processing of such data by Customer including, without limitation, loss of credit data or failure of Customer to timely and properly credit all consumer charges to Customer's bank account.

21. Confidentiality

By virtue of this Agreement, each party may have access to the other party's Confidential Information. The parties will hold each other's Confidential Information in confidence. With respect to all Confidential Information other than Software, Subscription Services and Documentation provided by Supplier, such obligation shall terminate three (3) years after termination of this Agreement. With respect to the Software, Subscription Services and Documentation provided by Supplier, such obligation is perpetual. The parties will not make each other's Confidential Information available in any form to any third-party for any purpose except to the extent necessary to exercise its rights under this Agreement and will treat Confidential Information of the other party with the same degree of care with which it would treat its own confidential information of a like nature, and in no case less than a reasonable degree of care. The parties agree that the limitations of liability contained herein shall not apply to any disclosure of Software, Subscription Services or Documentation in breach of this provision and that any such breach shall terminate the rights to such Software, Subscription Services and Documentation granted to Customer under this Agreement.

Confidential Information may only be disclosed to those employees or agents who are required to access it in furtherance of this Agreement and who are required to protect such Confidential Information against unauthorized disclosure. Supplier and Customer shall each implement and enforce policies and contractual obligations with its employees, agents and subcontractors to ensure its employees, agents and subcontractors protect the Confidential Information as required pursuant to this Section 21. It shall not be a breach of this Section 21 if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided that the party served with such process promptly notifies, to the extent legally permissible, the other party and provides reasonable assistance so that the other party may seek, at its own cost and expense, a protective order against public disclosure.

The parties recognize and agree that monetary damages are an inadequate remedy for breach of the obligations set forth in this Section 21 and further recognize that any breach would result in irreparable harm to the non-breaching party. In the event of such a breach, the non-breaching party may seek injunctive relief from a court of competent jurisdiction to pursue those remedies available to it.

22. Data

(a) Customer will have sole and exclusive responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer will not send or store infringing, obscene, threatening, libelous or otherwise unlawful or tortious material, including material that is harmful to children, violates third party privacy or intellectual property rights, includes malicious code, or that will interfere with the integrity of the Software or the Subscription Services. The Customer warrants that any personal data that forms part of the Customer Data has been obtained and processed fairly and lawfully and that the Customer has obtained all necessary consents to enable it to supply and/or disclose the personal data to Supplier and for Supplier to process the personal data pursuant to this Agreement.

(b) Each party agrees that, in the performance of its respective obligations under this Agreement, it shall comply with the provisions of applicable data protection law to the extent it applies to each of them. The parties further agree that Customer is the data controller in respect of any personal data that Supplier processes in the course of providing services for Customer. Accordingly, Supplier agrees that it shall: (i) only process Customer's personal data in order to provide the Software and/or Subscription Services or in accordance with any lawful instructions reasonably given by Customer from time to time; (ii) implement appropriate technical and organizational measures to protect personal data against unauthorized or unlawful processing and accidental destruction or loss; (iii) include in any contract with any subcontractors who shall process personal data provisions which are equivalent to those in this Section 22; (iv) take reasonable steps to ensure the reliability of its employees who have access to the personal data; and (v) as soon as reasonably practicable refer to Customer any requests, notices or other communication from data subjects, data protection or other law enforcement authority, for Customer to resolve.

(c) Where Customer is subject to EU data protection laws, Customer acknowledges and agrees that Supplier may transfer data personal data which it processes on Customer's behalf to countries outside the European Economic Area in order to provide the Subscription Services and carry out Supplier's other obligations under this Agreement.

(d) Supplier shall notify Customer without undue delay and, where feasible, not later than 72 hours after having become aware of discovery of

any data security incident impacting Customer Data. Supplier shall not be responsible for any loss or damage to Customer Data to the extent that such loss or damage was caused by Customer or a third party (other than a subcontractor of Supplier).

(e) Customer grants to Supplier a royalty-free, non-transferable, non-exclusive licence for the term of this Agreement to use Customer Data to the extent necessary to perform the Supplier's obligations under this Agreement. Notwithstanding anything to the contrary, Supplier shall have the right to collect and analyse data and other information relating to the provision, use and performance of various aspects of the Subscription Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Supplier will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Subscription Services and for other development, diagnostic and corrective purposes in connection with the Subscription Services and other Supplier offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

23. Warranty & Warranty Disclaimer:

(a) <u>Software – Limited Warranty</u>. In the event that Software is supplied hereunder, Supplier warrants the Software will operate substantially in accordance with the specifications set forth in the Documentation when delivered to Customer for a period of ninety (90) days after the Go-Live Date provided that the Software is used on the computer hardware equipment and with third party software programs which meet Supplier's minimum requirements as set forth in the Order Form(s) or exhibit(s), as applicable. Customer's exclusive remedy and Supplier's sole liability for breach of this warranty shall be for Supplier to use commercially reasonable efforts to correct such Errors. Without limitation, Supplier shall have no liability to Customer or any third party arising out of Customer's failure to back-up the Software and the related data.

(b) <u>Subscription Services – Limited Warranty</u>. In the event that access to Subscription Services is provided hereunder, Supplier warrants that the Subscription Services will conform in all material respects to the documentation provided by Supplier in relation to the Subscription Services. As Customer's sole remedy for any breach of this warranty, if Customer brings to Supplier's notice any incidence of non-conformance, Supplier will use reasonable efforts to correct the error.

(c) <u>Internet</u>. In the event that access to Subscription Services is provided hereunder, Supplier will use commercially reasonable efforts to ensure that the web pages generated with the Subscription Services will be served (i.e. delivered from Supplier's internal network or that of its Internet service provider) promptly regardless of the level of traffic to Supplier's servers, subject to outages, communication and data flow failures, interruptions and delays inherent in Internet communications. Customer acknowledges that problems with the Internet, equipment, software and network failures, impairments or congestion, or the configuration of Customer's computer systems, may prevent, interrupt or delay Customer's access to the Subscription Services or data stored within the Subscription Services. Supplier is not liable for any delays, interruptions, suspensions or unavailability of the Subscription Services or the data stored within the Subscription Services, attributable to problems with the Internet or the configuration of Customer's computer systems.

(d) <u>System Requirements</u>. Customer acknowledges that the Software and/or Subscription Services are intended to perform with, and Supplier provides the Software and/or Subscription Services based upon, the system requirements specified in the Order Form or additional documentation made available by Supplier to Customer, as those may be updated by Supplier from time to time. Supplier has no liability for failure of the Software and/or Subscription Services based upon Customer's failure to comply with such system requirements.

(e) <u>Products</u>. Supplier represents that it has the authority of each producer and/or manufacturer of Products which are subject to this Agreement to sell the same to Customer. Customer acknowledges

that, unless Supplier and Customer have expressly agreed for Supplier to provide Hardware Maintenance Services with respect to particular Hardware in accordance with Section 16, as further detailed in the Order Form, Supplier makes no warranties, conditions, representations or guarantees, express or implied, concerning Products. Supplier in so far as it is possible hereby assigns to Customer the producer's or manufacturer's warranty(s), if any, applicable to the Products. To the extent permitted by law, Supplier makes no representations regarding the validity or enforceability of any such producer's or manufacturer's warranty and Customer understands that its sole remedy for any breach of warranty is such as may exist against the producer or manufacturer under the producer's or manufacturer's warranty.

(f) <u>Hardware Warranty</u>. To the extent Supplier and Customer have expressly agreed for Supplier to provide Hardware Maintenance Services with respect to the Maintained Hardware in accordance with Section 16, as further detailed in the Order Form, and provided the Customer has paid the fees associated with such Hardware Maintenance Services, Supplier shall, during any period during which Customer has an active and current subscription for Hardware Maintenance Services ("Hardware Warranty Period"), subject to the terms and conditions set out in Section 16(a) through Section 16(c) above, at its own expense use commercially reasonable efforts to correct any defects in workmanship and parts with respect to the Maintained Hardware supplied by Supplier for which Customer has paid, reported to Supplier by Customer during the Hardware Warranty Period. Any such error correction provided to Customer will not extend the original Hardware Warranty Period. Supplier may repair or replace Maintained Hardware components (a) with new or previously used products or parts equivalent to new in performance and reliability or (b) with equivalent products to an original product that has been discontinued. All component parts or Hardware removed under this limited warranty become the property of Supplier. Customer is advised to make periodic backup copies of data stored on Customer's hard drives or other storage devices as a precaution against possible failures, alteration, or loss of the data. Before submitting any Hardware component for service, customer is advised to, to the extent applicable, back up data and remove any confidential, proprietary, or personal information. Supplier is not responsible for damage to or loss of any programs, data, or removable storage media in connection with hardware maintenance services. Supplier is not responsible for the restoration or reinstallation of any programs or data other than software installed by supplier when the Product is initially provided to customer. Serviced Hardware components may have the data erased from the hard drive and the programs restored to their original state. This paragraph represents the full extent of, and Customer's exclusive remedy in relation to, defective products subject to Hardware Maintenance Services.

(g) <u>Warranty Limitation</u>. The conditions and warranties set forth in this Agreement do not apply to the extent that non-compliance is caused by, or has resulted from, (i) Customer's use of the Software, Subscription Services or Products other than as authorized in this Agreement; (ii) use of the Software, Subscription Services or Products in combination with other software, data or products that are defective, incompatible with, or not authorized in writing by Supplier for use with the Software, Subscription Services or Products; (iii) any malfunction of Customer's hardware, computers, computer-related equipment or network connections; and (iv) any modification of the Software or the Subscription Services not performed by Supplier or otherwise authorized by Supplier in writing.

(h) <u>Disclaimer</u>. EXCEPT FOR THE WARRANTIES PROVIDED IN THIS SECTION 23 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, APPLICABLE, THE SUBSCRIPTION SERVICES, AS APPLICABLE, THE PROFESSIONAL SERVICES, IF ANY, AND THE PRODUCTS, IF ANY, ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND SUPPLIER DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY AND CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR THE USE OF REASONABLE SKILL AND CARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUPPLIER

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MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE USE OF REASONABLE SKILL AND CARE, NON-INFRINGEMENT, SATISFACTORY QUALITY, ACCURACY, FREEDOM FROM ERROR OR THAT THE SOFTWARE, AS APPLICABLE, THE SUBSCRIPTION SERVICES, AS APPLICABLE, THE PROFESSIONAL SERVICES, IF ANY, AND THE PRODUCTS, IF ANY, WILL MEET ALL OF CUSTOMER'S REQUIREMENTS. SUPPLIER MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY SOFTWARE, HARDWARE OR SERVICES PROVIDED IN CONNECTION WITH THE SOFTWARE OR THE SUBSCRIPTION SERVICES. SUPPLIER'S LIMITED WARRANTIES DO NOT APPLY TO ANY SOFTWARE WHICH HAS BEEN MODIFIED OR ALTERED IN ANY MANNER BY ANYONE OTHER THAN SUPPLIER OR ITS AUTHORIZED AGENT. SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN OR ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. IN THAT EVENT, SUCH WARRANTIES, REPRESENTATIONS, GUARANTEES OR CONDITIONS ARE LIMITED IN DURATION TO THE WARRANTY PERIOD TO THE EXTENT LEGALLY PERMISSIBLE.

Nothing in this Agreement excludes, restricts, or modifies any right or remedy, or any guarantee, representation, warranty, condition or other term, implied or imposed by any applicable law which cannot lawfully be excluded or limited. This may include any consumer law which contains guarantees that protect the purchasers of goods and services in certain circumstances. If any guarantee, representation, warranty, condition or other term is implied or imposed concerning this Agreement under any consumer law or any other applicable law and cannot be excluded (a "Non-Excludable Provision"), and Supplier is able to limit Customer's remedy for a breach of the Non-Excludable Provision, then the liability of Supplier for breach of the Non-Excludable Provision is limited to one or more of the following, at Supplier's option: (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or (b) in the case of services, the supplying of the Subscription Services again, or the payment of the cost of having the Subscription Services supplied again. Customer may make such a guarantee claim by contacting the Supplier at the contact details set forth in the Order Form.

The parties agree that it is Customer's responsibility to determine whether the Software, the Subscription Services and the Hardware, in each case, as applicable, are suitable for Customer's requirements. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of this Agreement or have any legal effect whatsoever.

24.   **Indemnification**

(a)   <u>Intellectual Property Infringement Indemnification in Favour of Customer</u>. Supplier will hold harmless, defend, and indemnify Customer Indemnified Parties from and against any and all costs, damages and expenses arising out of any claim brought against Customer by a third party based on the claim that the Software or the Subscription Services, or Customer's use of the Software or the Subscription Services infringes or misappropriates any United States, Canadian, United Kingdom, European Union, Australian or New Zealand patent, copyright, trade secret, or trademark of that third party, provided that Customer (i) notifies Supplier in writing no later than thirty (30) days after Customer's receipt of notification of potential claims; (ii) allows Supplier to assume sole control of the defense of such claim and all related settlement negotiations and (iii) provides Supplier, at Supplier's sole cost and expense, with all reasonable assistance, information and authority necessary to perform Supplier's obligations under this Section. Supplier will not be liable for any infringement or claim based upon any modification of the Software or the Subscription Services developed by Customer, or use of the Software or the Subscription Services in combination with software or other technology not supplied or approved in advance by

Supplier, or use of the Software or the Subscription Services contrary to this Agreement or the Documentation, including operator and user manuals. If the Software or the Subscription Services are held by a court of competent jurisdiction to infringe, Supplier, at its own expense, shall (a) replace or modify the Software or the Subscription Services, as applicable, to be non-infringing; (b) obtain for Customer a right to continue using the Software or the Subscription Services, as applicable; or (c) if neither (a) nor (b) is feasible, terminate the Agreement and refund a portion of the Fees paid by Customer for the Software or the Subscription Services, as applicable, for which Customer has not yet enjoyed use of the Software or the Subscription Services, including fees or costs associated with custom development and services paid for but not yet delivered. THE FOREGOING STATES SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER INDEMNIFIED PARTIES WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.

(b)   Customer's Indemnity. Customer agrees to indemnify, hold harmless and defend Supplier Indemnified Parties from and against all costs, damages and expenses arising out of or on account of any violation of Section 4 (Permitted Use and Restrictions on Use) or Section 22(a) (Customer Data) by Customer.

25.   **Limitation of Liability**

EXCEPT FOR LIABILITY ARISING (I) FROM CUSTOMER'S BREACH OF SECTION 4 (PERMITTED USE AND RESTRICTIONS ON USE), (II) UNDER SECTION 24 (INDEMNIFICATION) OR (III) FOR PERSONAL INJURY OR DEATH CAUSED BY NEGLIGENCE, (IV) FRAUD OR FRAUDULENT MISREPRESENTATION:

(A) TO THE FULL EXTENT PERMITTED BY LAW, SUPPLIER'S ENTIRE LIABILITY UNDER THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, AS APPLICABLE, THE SUBSCRIPTION SERVICES, AS APPLICABLE, THE PROFESSIONAL SERVICES, IF ANY, AND THE PRODUCTS, IF ANY, OR ANY RELATED ITEMS WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO SUPPLIER PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM; AND

(B) NEITHER PARTY WILL BE LIABLE FOR:

(I) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT OR IN ANY WAY RELATED TO THE SOFTWARE, AS APPLICABLE, THE SUBSCRIPTION SERVICES, AS APPLICABLE, THE PROFESSIONAL SERVICES, IF ANY, AND THE PRODUCTS, IF ANY, OR ANY RELATED ITEMS; OR

(II) ANY LOSS OF REVENUE, PROFITS, GOODWILL OR DATA, OR DATA USE (INCLUDING AS A RESULT OF A VIRUS), BUSINESS INTERRUPTION, FAILURE TO REALIZE AN EXPECTED SAVING, CORRUPTION OF DATA, OR CLAIMS AGAINST THEM BY ANY THIRD PARTY,

EVEN IF THE PARTIES ARE ADVISED, OR MAY REASONABLY SUPPOSED TO HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

SUCH LIMITATIONS WILL APPLY REGARDLESS OF HOW THE CLAIM ARISES, WHETHER ARISING BASED ON CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE AND WILL APPLY TO ALL ORDER FORMS, SCHEDULES, ADDENDA, AGREEMENTS AND ATTACHMENTS RELATED TO THIS AGREEMENT.

THE FOREGOING LIMITATIONS OF LIABILITY ALLOCATE THE RISKS BETWEEN SUPPLIER AND CUSTOMER AND FORM A MATERIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. SUPPLIER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

26.   **Term and Termination**

(a)   <u>Term</u>. The initial term of this Agreement will commence on the Effective Date and will continue thereafter for the period as set out in

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the Order Form(s) ("Initial Term") unless terminated earlier by Supplier or Customer in accordance with the terms of this Agreement. This Agreement will automatically renew for additional one (1) year periods (or for periods of the length specified in the applicable Order Form) (each being a "Renewal Term" and, collectively, with the Initial Term, the "Term") unless either party provides the other party with ninety (90) days written notice prior to the conclusion of the Initial Term or the Renewal Term, as applicable. All terms and conditions hereof shall remain in effect during any Renewal Term, except as the parties otherwise expressly agree to in writing.

(b) <u>Failure to Pay Annual Fee</u>. In the event that Customer fails to pay the applicable annual Fees when due, Supplier reserves the right to elect to take one of the following courses of action (without limiting Supplier's other available remedies): (i) notify Customer that this Agreement will immediately expire (or has expired) effective as of the expiration of the then-current annual license period; or (ii) allow this Agreement to renew for another renewal period, in which event, the applicable annual license fees for such renewal period will continue to be payable; provided, however, that if Supplier does not affirmatively notify Customer that alternative (i) or (ii) has been selected, then alternative (ii) will apply.

(c) <u>Termination by Customer</u>. Customer has the right to terminate this Agreement if Supplier is in default of any term or condition herein, and fails to cure such default within thirty (30) days after receipt of written notice of such default or if Supplier becomes insolvent or any proceedings are to be commenced by or against Supplier under any bankruptcy, insolvency or similar laws.

(d) <u>Termination by Supplier</u>. Subject to 26(b) (Failure to Pay Fees), Supplier has the right to terminate this Agreement if Customer is in default of any term or condition of this Agreement, and fails to cure such default within thirty (30) days after receipt of written notice of such default. Without limitation, it will be deemed a Customer default under this Agreement if Customer fails to pay any amount when due hereunder. Supplier may terminate this Agreement immediately if: (i) Customer breaches Section 4 (Permitted Use and Restrictions on Use) or Section 22(a) (Customer Data); or (ii) Customer becomes insolvent, a receiver, administrator, controller or a liquidator is appointed to Customer, Customer assigns any of its property for the benefit of creditors or any class of them or any proceedings have been commenced by or against Customer under any bankruptcy, insolvency or similar laws.

(e) <u>Early Termination</u>. Customer understands that Supplier has undertaken significant implementation and investment costs which are intended to be amortized over the Initial Term. In consideration of the costs and the pricing structure acknowledged and accepted in the Order Form, Customer agrees to pay liquidated damages if Customer elects early termination during such Initial Term (other than pursuant to Section 26(c)). The liquidated damages for such early termination will be the value of the fees for the remainder of the Initial Term, along with any outstanding fees for additional modules and services ordered but not yet paid for by Customer since the date of this Agreement. These liquidated damages are due and payable in a lump sum on the date of termination of the Agreement. Customer acknowledges that the actual damages likely to result from a breach of the Initial Term by Customer are difficult to ascertain and that the foregoing liquidated damages are intended to represent estimated actual damages and are not intended as a penalty.

(f) <u>Data Portability and Deletion</u>. In the event that Subscription Services are provided pursuant to this Agreement, upon request by Customer made within thirty (30) days after the effective date of termination or expiration of this Agreement, Supplier will make the Customer Data available to Customer for export or download. After such thirty (30) day period, Customer acknowledges that Supplier will have no obligation to maintain or provide Customer Data.

(g) <u>Surviving Provisions</u>. Following the termination of this Agreement, the Sections titled "Ownership of Intellectual Property," Customer Input," "Payment Terms," "Taxes; Customs," "Confidentiality," "Data," "Warranties & Warranty Disclaimer," "Indemnification," "Limitation of Liability," "Term and Termination," "Assignment," "Governing Law," "Dispute Resolution" and "General Provisions" will

continue in full force and effect in accordance with their terms.

27. Audit

During the Term, Customer shall maintain complete and accurate books, records, policies, and procedures (collectively "Books and Records") sufficient to confirm Customer's compliance with these Terms and Conditions and the Order Form(s), including without limitation compliance with Permitted Use, and payment of Fees to Supplier. During the Term and for a period of one (1) year thereafter, Customer shall permit Supplier (or an independent representative engaged by Supplier), upon thirty (30) days prior written notice, to audit (each an "Audit") Customer's Books and Records and deployment of the Software and/or Subscription Services to the extent reasonably necessary to verify Customer's compliance with the terms, conditions, and restrictions of this Agreement, at such times during Customer's regular business hours as Supplier may reasonably request. Supplier may exercise its right to audit no more frequently than one (1) time each calendar year. If any Audit should disclose any underpayment of Fees, Customer shall promptly pay Supplier such underpaid amount (whether before or after judgment), together with interest thereon at a rate of one and one-half percent (1.5%) per month during which each such amount was owed and unpaid, or the highest interest rate allowed by law, whichever is lower. If the amount of such underpayment exceeds five percent (5%) of amounts otherwise payable, then Customer shall reimburse Supplier for Supplier's reasonable and customary audit expenses. The rights and obligations set forth in this Section 27 shall survive termination or expiration of the Term for a period of one (1) year from such termination or expiration.

28. Assignment

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all schedules and Order Forms), without the other party's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. In the case of Customer, the following requirements shall exist: (i) Customer must be current with any and all payment due to Supplier hereunder and (ii) Customer shall execute and cause its permitted assignee to execute assignment documents in a form provided by or acceptable to Supplier. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. Any purported assignment in violation of this section shall be void and of no effect. Any permitted assignee shall assume all assigned obligations of its assignor under the Agreement.

29. Governing Law

The law that will apply to any question of interpretation regarding this Agreement, any question of the existence of this Agreement, or a lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such lawsuit, depend on the country of incorporation, or organization, as applicable, of Customer, and will be determined as follows:

Customer Country of Incorporation:	Governing Law:	Courts Having Jurisdiction:
The United States of America, Mexico or a Country in Central or South America or the Caribbean	The laws of the State of New York and the federal laws of the United States applicable in that state.	Either (a) the United States District Court for the Southern District of New York, to the extent that such court has

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Customer Country of Incorporation:	Governing Law:	Courts Having Jurisdiction:
		subject matter jurisdiction, or (b) the Commercial Division of the Supreme Court of the State of New York in New York County (or, if such court lacks subject matter jurisdiction, in the courts of the State of New York in New York County)
Canada	The laws of the Province of Ontario and the laws of Canada applicable in that province.	Toronto, Ontario
The United Kingdom or Another Country in Europe, the Middle East or Africa	The laws of England and Wales.	England and Wales
Australia or a Country in Asia or the Pacific Region	The laws of the State of New South Wales and the laws of the Commonwealth of Australia applicable in that state.	Sydney, Australia

Each party agrees to the applicable governing law above, without regard to choice or conflicts of law rules, and to the jurisdiction of the applicable courts above. The parties exclude the operation of the United Nations Convention on Contracts of the International Sale of Goods.

30. Dispute Resolution

Upon any dispute, controversy or claim between the parties, each of the parties will designate a representative from senior management to attempt to resolve such dispute. The designated representatives will negotiate in good faith in an effort to resolve the dispute over a period of thirty (30) days. If the dispute is not resolved in this thirty (30) day period, a party may submit the dispute to binding arbitration. Customer shall select an arbitrator from a list of three (3) arbitrators to be provided by Supplier to Customer, each of which shall be skilled in the legal and business aspects of the software industry. The parties agree that the arbitrator's fee shall be split equally between the parties and that each party shall be responsible for its costs, legal and otherwise, in relation to the arbitration, unless the arbitrator decides that the circumstances justify an award of costs. The arbitration shall be conducted in the English language and shall take place in accordance with arbitration rules and in the location set forth in the below chart, depending on the country of incorporation, or organization, as applicable, of Customer:

Customer Country of Incorporation:	Applicable Arbitration Rules:	Location of Arbitration:
The United States of America, Mexico or a Country in Central or South America or the Caribbean	Commercial Arbitration Rules of the American Arbitration Association	New York City, New York
Canada	Canadian Arbitration Association	Toronto, Ontario
The United Kingdom or Another Country in Europe, the Middle East or Africa	London Court of International Arbitration	London, England
Australia or a Country in Asia or the Pacific Region	Australian Centre for Commercial Arbitration	Sydney, Australia

The foregoing provision shall not limit the ability of a party to seek injunctive relief.

31. General Provisions

(a) Export Compliance. The Software, the Subscription Services, derivatives thereof and the Hardware may be subject to export laws and regulations. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit access or use of the Software or the Subscription Services, as applicable, in a U.S.-embargoed country (currently Crimea-Region of Ukraine, Cuba, Iran, North Korea, Sudan, and Syria), EU-embargoed country, and United Nations-embargoed country or in violation of any other applicable embargo, export law or regulation.

(b) Anti-Corruption. Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Supplier's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Supplier.

(c) Modifications. This Agreement may not be modified except in writing signed by both parties.

(d) Subcontractors. Supplier reserves the right to make use of subcontractors to provide services and to use such means as Supplier, in its sole discretion, considers appropriate. Supplier's use of subcontractors shall not relieve it of its obligations under this Agreement.

(e) Independent Contractor. The relationship of the parties established by this Agreement is that of independent contractors. This Agreement does not establish an agency, joint venture or partnership relationship between Supplier and Customer. Supplier and its personnel, agents, Suppliers, and Supplier's authorized representatives, are acting as independent contractors and not as employees or agents of Customer. Nothing in this Agreement will be construed to permit either party to bind the other or to enter into obligations on behalf of the other party.

(f) Non-Solicitation. During the Term of this Agreement and for a period

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of one (1) year following the termination of this Agreement, each party hereto agrees not to solicit, recruit or employ any employee of the other party without the prior written consent of the Chief Executive Officer, President or Director of the other party. For purposes of this section, the terms "employee," shall include any person with such status at any time during the six (6) months preceding any solicitation in question. For the avoidance of doubt, the foregoing restriction shall not apply to the following forms of solicitation (and resulting employment): (i) a party using general bona fide solicitations directed at the public or industry participation in general in publications or internet resources not specifically targeted at employees of the other party, or employing any person who responds to such solicitations; (ii) using search firms, or hiring any persons solicited by such search firms, so long as such firms are not advised by a party to solicit employees of the other party; or (iii) soliciting any person who has left the employment of the other party prior to the date of this Agreement.

(g) Force Majeure. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control provided that the party affected by such failure or delay gives the other party prompt written notice of the cause and uses commercially reasonable efforts to correct such failure or delay within a reasonable period of time.

(h) Severability. If any provision contained herein or part thereof is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, such invalid provision or part thereof shall be deemed not to affect or impair the validity or enforceability of any other provision or part thereof contained herein, all of which remaining provisions or parts thereof shall be and remain in full force and effect.

(i) Headings. The headings and subheadings contained herein are inserted for convenience of reference only and shall in no way be construed to be interpretations of terms.

(j) Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after being sent by pre-paid recorded post; or (iii) the second business day after sending by facsimile with telephonic confirmation of receipt. Notices to Supplier shall be sent to the address shown in the introductory paragraph of this Agreement addressed to Supplier's signatory of this Agreement. Notices to Customer shall be sent to the address shown in the introductory paragraph of this Agreement addressed to Customer's signatory of this Agreement. Each party may modify its recipient of notices by providing notice pursuant to this Agreement.

(k) Waiver. No delay by either party in enforcing any of the terms or conditions of this Agreement will affect or restrict such party's rights and powers arising under this Agreement. No waiver of any term or condition of this Agreement will be effective unless made in writing. The waiver by any party of a breach of this Agreement does not constitute a waiver of a repeat of the same breach or of other breach of rights or obligations under this Agreement.

(l) Third party rights. A person who is not a party to this Agreement shall not have any rights to enforce any term of this Agreement.

(m) Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement and supersedes all proposals, oral and written, and all previous negotiations and communications between the parties and their representatives with respect to the subject matter of this Agreement. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement. This Agreement will prevail over terms and conditions of any Customer-issued purchase order or procurement terms, which will have no force and effect, even if Supplier accepts or does not otherwise reject the purchase order or procurement terms.

(n) Counterparts. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a Portable Document Format (PDF), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

32.   Definitions and Interpretation

The definitions and rules of interpretation in this Section shall apply to this Agreement.

(a) Capitalized Terms. The following capitalized terms shall have the meanings ascribed to them in this section:

"Affiliate"	Includes any entity or association controlled by, controlling or under common control with a party and for the purposes of this definition, the term "control" shall mean (i) the ownership of more than fifty percent (50%) of the voting shares of the subject entity or association; (ii) the right or power, directly or indirectly, to elect or remove directors; or (iii) the right or power to control management.
"Agreement"	The Order Form(s), these Terms and Conditions and any attached schedules.
"Audit"	Has the meaning set out in Section 27.
"Branding"	Has the meaning set out in Section 11.
"Books and Records"	Has the meaning set out in Section 27.
"Confidential Information"	All tangible or intangible information and materials, in any form or medium, including, but not limited to, all of the following, whether or not patentable: information that is clearly designated or identified as confidential by appropriate letter or by a proprietary stamp or legend; all information disclosed orally or visually, or other form of tangible information without an appropriate letter or a proprietary stamp or legend, if it would be apparent to a reasonable person familiar with the party's business and industry in which it operates, that such information is of a confidential nature; Software, Subscription Services, and the Documentation; documentation and other information related to hardware specifications, components lists, suppliers and the like; any scientific or technical design, drawing, process, technique or procedure; trade secrets; information related to business plans, forecasts, sales and marketing plans, Customers, pricing and finances; Customer data contained in the Software and Subscription Services databases; the conduct of the other party in performing this Agreement; and the terms and conditions of this Agreement. Confidential Information will not include information that: (i) is or becomes generally known to the public through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed

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	to the other party by a third-party without restriction on disclosure; or (iv) is independently developed by or for the other party without use of or reference to the other party's Confidential Information, as evidenced by files from the time of such independent development.		in the Order Form, which Supplier either distributes or rents to Customer.
"Customer"	Means the "Customer" specified on the front page of this Master Agreement (POS) or in the Order Form.	"Hardware Configuration"	Has the meaning set out in Section 16(a).
		"Hardware Maintenance Services"	Has the meaning set out in Section 16(b).
"Customer Data"	Has the meaning set out in Section 9.	"Hardware Rental Period"	Means the period during which Customer is to rent Hardware from Supplier, as set out in the Order Form.
"Customer Indemnified Parties"	Customer and its Affiliates and any of their respective officers, directors, employees, agents, successors and permitted assigns.	"Hardware Warranty Period"	Has the meaning set out in Section 23(f).
"Customer Input"	Suggestions, enhancement requests, recommendations or other feedback provided by Customer, its employees, contractors and agents relating to the operation or functionality of the Software or the Subscription Services.	"Initial Term"	Has the meaning set out in Section 26(e).
		"Maintained Hardware"	Has the meaning set out in Section 16(b).
		"New Product"	Any new feature, module or enhancement to the Software or the Subscription Services that Supplier markets and licenses for additional fees separately from Updates.
"Customer Sites"	The physical location or address where Customer utilizes the Software or the Subscription Services for the Permitted Use, as set out on the applicable Order Form(s).	"Order Form"	A separate document provided by Supplier, agreed to by the parties to, and governed by, this Agreement, by which Customer orders Software, Subscription Services, Hardware, Third Party Software, and services. Additional Order Forms executed by the parties with respect to additional licences, Products and services will form part of this Agreement.
"Delivery"	Means the transfer of physical possession of the Software, Products, or provision of access to the Subscription Services, to the Customer.		
"Delivery Date"	Means the date of Delivery, set out in the Order Form or as otherwise notified to Customer by Supplier.	"Other Assistance"	Has the meaning set out in Section 5.
"Delivery Costs"	Costs related to the delivery of the media containing the Software, as well as any Products, including insurance, packaging, shipping, freight and other delivery-related costs.	"Permitted Use"	The quantity or extent of access to the Subscription Services, or, as applicable, a licence to the Software or particular modules thereof, as specified in the Order Form. The Order Form may specify that the licence is measured by number of Users, number of Workstations or limited to specific Customer Sites.
"Documentation"	Supplier-supplied related hard-copy or electronically reproducible technical and user documents associated and provided with the Software and/or Subscription Services.		
		"Products"	Has the meaning set out in Section 13.
		"Professional Services"	Has the meaning set out in Section 17.
"Effective Date"	Has the meaning set out on the first page of this Agreement.	"Software"	The (i) machine-readable instructions and data, (ii) components, files, and modules, (iii) audio-visual content (such as images, text, recordings or pictures) and (iv) related licensed materials, such as activation keys, as applicable, as further described in the Order Form(s), as well as any Updates.
"Error"	Reproducible error of the Software or the Subscription Services which prevents the use of the Software or the Subscription Services as described in the specifications set forth in the Documentation.		
		"Subscription Services"	Has the meaning set out in Section 1.
"Fees"	Licence and/or subscription fees, implementation and training fees, annual licence and maintenance fees, as applicable, amounts payable in respect of Hardware and all other fees due hereunder.	"Supplier"	Means the "Supplier" specified on the front page of this Master Agreement (POS) or in the Order Form.
		"Supplier Indemnified Parties"	Supplier and its Affiliates and any of their respective officers, directors, employees, agents, successors and permitted assigns.
"Go-Live Date"	The date on which Customer first uses the Software to process its daily business relative to the functions that the Software automates.		
		"Supplier Authorized Representatives"	Supplier's authorized representatives who, by written authorization from Supplier, may have authorization to sell, install, or provide training in respect of the Software, the Subscription Services or the Hardware.
"Hardware"	Point of sale terminals, computer equipment, peripherals and other hardware, as specified		

"Taxes"	Any local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added taxes, excise, use, goods and services taxes, consumption taxes or similar taxes, export and import fees, customs duties and similar charges, in each case, associated with the Software, Subscription Services, Third Party Software and/or Hardware, imposed upon the Fees or otherwise arising out of, or in connection with, the transactions contemplated by this Agreement.
"Technical Support"	Has the meaning set out in Section 5.
"Term"	Has the meaning set out in Section 26(a).
"Third Party Components"	Software, peripherals, materials or other products produced by third party suppliers.
"Third Party Software"	Software produced by third party suppliers which Supplier distributes or resells to its Customers.
"Updates"	The latest updates, modifications, improvements to the Software or the Subscription Services, including corrections of Errors, which relate to the operating performance but do not change the basic functionality of the Software or the Subscription Services.
"User"	A person or machine that utilizes the Software or the Subscription Services for the Permitted Use, as authorized pursuant to an Order Form, as applicable.
"Workstation"	A personal computer or device providing equivalent functionality which is capable of executing the Software and/or Subscription Services and which is linked to a computer network from which the Software is accessible, as authorized pursuant to an Order Form, as applicable.

(b) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

(c) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

(d) A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

(e) Any words following the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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