end user license agreement

This Software License Agreement (" Agreement") is entered into as of the date (the "Effective Date") specified in the   Order Form referencing the software between Licensor, Inc., a Vancouver, Washington Corporation ("Licensor") and the individual or entity outlined in the Order Form ("Customer").   Customer enters into and accepts this Agreement and the terms and conditions hereof as of the Effective Date by (i) Customers acceptance of the log-in or other screen for such purpose, (ii) use of the Software, or (iii) signing the Order Form.

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

1.   **Definitions**

"Documentation" means any help files, instruction manuals, operating instructions, user manuals, and specifications provided by Licensor which describe the use of the Software and which either accompany the Software or are provided to Customer at any time.

"Equipment" means the computer system, including peripheral equipment and operating system software, specified in the Documentation.

"Named User" is defined as an individual authorized by Customer to use the Software regardless of whether the individual is actively using the Software at any given time. Each Named User will be assigned a unique user name and password.

"Releases" shall mean released versions, if any, to the Software. "Major Releases" involve substantial modification, addition or removal of functionality while "Minor Releases" generally contain changes or fixes. Major Releases are designated by a change in the number to the left of the decimal point of the number appearing after the product name while Minor Releases are designated by a change in such number to the right of the decimal point. Licensor is the sole determiner of the availability and designation of an update as a Major Release or Minor Release. Major Releases exclude software releases which are reasonably designated by Licensor as new products. Where used herein "Releases" shall mean Major Releases or Minor Releases or both as the context requires.

"Site" means the physical location specified in the order form.

"Subsidiary" means all current and future business entities as to which a party owns, directly or indirectly, more than fifty percent (50%) of the equity ownership and voting rights that provide the power to select the management of the entities, for so long as such ownership and control exists.

"Third Party Component" will mean any component of the Software, as listed in Licensor's Documentation, provided by a third party Licensor to Licensor and utilized as a component of the Software.

"Go-live Date" is equal to the date Licensor staff transfers the customers production database to the Customers business location or hosted environment.

"Licensor Software" means the package of proprietary computer software programs, in Object Code as identified on the Order Form. Unless specifically indicated or the context requires otherwise, the term Licensor Software shall include all Upgrades to the Licensor Software provided to Customer by Licensor as well as any add-on or other software applications such as Licensor Mobile Software.

"Order Form" means the Licensor produced quote/order, or similar document, between Licensor and Customer referencing the licensing of the Software, any Hardware purchases, Licensee Fee(s), and any Maintenance Services fees, and accepted in writing by Customer or through a click through acceptance.   The Order Form is a material part of this Agreement.

"Upgrade" means any modification, correction, enhancement, deletion, or substitution to Software, including but not limited to, any data file or module thereto that may be provided by Licensor or a third party, whether under this Agreement, or any other agreement between Customer and Licensor. Upon the installation of any Upgrade of the Software, Customer's License to previous versions of the Software terminates immediately.

2. **Delivery and License**

2.1.   <u>Delivery</u>. Delivery of the Software ("Delivery") will be deemed to have taken place when (a) Licensor installs the Software on Customers server or other host computer or (b) makes the Software available for download and the Licensor has notified the Customer that the Software is available. Licensor will provide Documentation in paper, on disk, or online form, at Licensor's discretion.

2.2.   <u>Installation</u>.   Licensor will install the Software on the Equipment at the Site(s) based on a mutually agreed

upon schedule, subject to Customer's obligation to pay Licensor's fees for installation as described in the order form. Customer agrees that if Customer delays the agreed-upon installation schedule through no fault of Licensor (e.g., the Equipment is not available, or is not configured as required in the applicable Documentation) that in addition to the fee for installation, Customer may be subject to additional implementation fees at Licensor's then current rates.

3. **License**

   3.1.   Grant of License.   Subject to the terms and conditions of this Agreement, upon Delivery, Licensor grants Customer and Customer accepts a perpetual (unless terminated as expressly provided for below), non-exclusive, non-transferable (except as expressly provided for below) license to install and use the Software solely for Customer's own internal business use. Customer's license to use the Software is limited to the number of concurrent Users stated on the order form (or such greater number as Customer may have purchased from Licensor at Licensor's applicable pricing).

   3.2.   Copies.   Customer will be entitled to make a reasonable number of binary copies of the Software for backup or archival purposes only. Customer may make a reasonable number of copies of the Documentation for internal use. Customer may not copy the Software, except as permitted by this Agreement. Whenever Customer is permitted to copy or reproduce all or any part of the Software, all titles, trademark symbols, copyright symbols and legends, and other proprietary markings must be reproduced.

   3.3.   License Management Software.   Licensor reserves the right to use license management software to limit Customer's use of the Software to the limits stated in this Agreement. Customer will not circumvent or attempt to circumvent such license management software.

   3.4.   Additional Software.   By written agreement, the parties may add additional Licensor software programs to this Agreement. Upon such written agreement, the additional programs will thereafter be included in "Software" under this Agreement. No terms stated in Customer's purchase order or other form document will modify this Agreement. Licensor reserves the right to require different or additional terms and conditions for the licensing of any additional software.

4. **Third Party Components.**   Any Third Party Component used in or with such additional Licensor software may be licensed to Customer subject to its different or additional terms and conditions.

5. **Support Maintenance Services**

   5.1.   Maintenance Period.   Unless otherwise provided on the Order Form, Customer will be required to purchase Support Maintenance Services commencing from the Go-Live Date (the "Maintenance Period"), paid monthly (pro-rated for interim months) or annually.   All Maintenance Services are provided by Licensor and not third parties. In the event that Customer elects not to continue paying for Support Maintenance Services and later seeks to reinstate such Maintenance Services and/or receive software updates, it will be in Licensor's sole discretion whether to reinstate such Maintenance Services and on what terms.   Maintenance Services cannot be limited to certain Log-In Users; therefore, if Customer wants to have Maintenance Services for any Log-In Users under this Agreement then it will be required to have Maintenance Services for all Log-In Users under this Agreement. Maintenance Services are month to month terms and required as part of the license agreement.

   5.2.   Maintenance Fee.   Maintenance fees are outlined on the Customer Order Form.   Maintenance fees are calculated based on number of licensed users.   As such, if a Customer purchases additional user licenses, there is a corresponding increase in annual maintenance fees, prorated based on purchase date.   All Customers are required to complete and submit an Order Form addendum when adding additional user's licenses.

   5.3.   Scope of Maintenance Services. Unless otherwise provided in a Customer Services Plan between Licensor and Customer, the Maintenance Services shall be the services specified on Licensor's website at http://www.evosus.com/SLA or such other webpage of which Licensor shall notify Customer by email to Customer's email address.

   5.4.   Limitations.   Maintenance Services do not include onsite service visits by Licensor at Customer's location. Licensor may perform services other than the Maintenance Service(s) as requested and approved by Customer and to the extent agreed upon by Licensor.   In exchange for such additional services, Customer agrees to pay Licensor its normal hourly rates then existing for such services.   In addition to the hourly rates, Customer shall reimburse Licensor for shipping, travel, living, and out-of-pocket expenses reasonably incurred in conjunction with the rendering of additional services hereunder.

5.5. <u>Designated Customer Personnel</u>.   Customer shall provide prior written notice to Licensor of primary two Customer contacts authorized to contact support or in the event there are any restrictions on whom Licensor may interface with in providing Maintenance Services to Customer.

6. **License Restrictions.**   Customer agrees not to: (a) sell, lease, license or sublicense the Software or the Documentation; (b) decompile, disassemble, or reverse engineer the Software, in whole or in part; (c) write or develop any derivative software or any other software program based upon the Software or any Confidential Information; (d) use the Software to provide services on any ASP, software-as-a-service or service bureau basis; or (e) use, copy, exploit, or permit use of the Software except as expressly authorized in this Agreement.

7. **Ownership.** This Agreement grants a license only and transfers to Customer no ownership interest. Licensor and its suppliers reserve all rights not expressly granted.

8. **Fees and Payments**

8.1. <u>Fees</u>. Customer shall pay to Licensor the License Fees, any applicable Maintenance Services fees, and other charges and expenses set forth in the Order Form. The License Fees shall be paid in U.S. Dollars unless otherwise specifically agreed in writing by both parties. For any fees payable after completion of the delivery and/or installation obligations hereunder (e.g., Maintenance Services fees), Licensor may modify such fees at its discretion upon notice to Customer at least sixty (60) days prior to the due date of such fees. If no payment terms are set forth on the Order Form, Customer shall make payment upon the earliest of receipt of any invoice or delivery of the Software.   Customer shall pay for all additional services provided and costs incurred by Licensor which are not described herein on a time-and-expenses basis in accordance with Licensor's then standard rates as established by Licensor from time to time.   All such payments shall be paid in full when due, without right of deduction or set-off.

8.2. <u>Past-Due Charges</u>.   Customer agrees to pay a charge for any amounts that are more than thirty (30) days past due at the rate of the lesser of (i) one and one-half percent (1.5%) per month or (ii) the greatest rate allowed by law. In addition, Licensor may (i) terminate the Customer's ability to purchase additional Licenses or Hardware while charges are past due, and/or (ii) terminate Customer's use of the Software and any current or future software updates as provided herein.

8.3. <u>Taxes</u>.   All fees paid or payable to Licensor are exclusive of any federal, state, or local excise, sales, use, intangible, import charges, value added, or other taxes, duties or similar assessments imposed with respect to the Software, Documentation, Hardware, and/or the services provided hereunder.   Customer is solely responsible for the payment of any and all taxes resulting from this License, the use of the Software, Hardware, or this Agreement, except for any federal, state, or local income tax imposed on Licensor in connection with revenues associated with this Agreement.   Customer hereby agrees to hold harmless Licensor from and against any and all claims and liabilities arising from Customer's failure to report or pay any such taxes, duties or similar assessments if any and to promptly pay any such taxes, duties or similar assessments that may become due.

9. **Limited Warranty**

9.1. Licensor warrants that for a period of thirty (30) days from the date of installation (the "Warranty Period") (a) the Software will perform free from defects in materials and workmanship under normal use. If during the Warranty Period the Software does not perform as warranted (a "Non-Conformity"), Licensor shall undertake to correct such Non-Conformity, or if correction is not reasonably possible, replace such Software free of charge. If the foregoing is not commercially practicable, Licensor shall terminate this Agreement and refund to Customer the License Fee. The foregoing are Customer's sole and exclusive remedies for breach of this limited warranty. The warranty set forth above is made to and for the benefit of Customer only. The warranty will apply only if:

9.1.1. The Software has been properly installed and used at all times and in accordance with the instructions for use; and

9.1.2. No modification, alteration or addition has been made to the Software by persons other than Licensor or Licensor's authorized representative, except as authorized in writing by Licensor.

10. **Exclusion and Limitations**

10.1. <u>Warranty Exclusion</u>. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT. LICENSOR SPECIFICALLY DISCLAIMS ALL

IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

10.2. <u>Limitation of Liability</u>. In no event will Licensor be liable for any loss of profits, loss of use, business interruption, loss of data, cost of cover or indirect, special, incidental or consequential damages even if Licensor has been advised of the possibility of such damages. Licensor will not be liable for any damages caused by delay in delivery or furnishing the Software or services. Licensor's liability under this Agreement for damages of any kind will not, in any event, exceed the License Fees paid by Customer to Licensor under this Agreement.

10.3. <u>Claims</u>. No action arising out of any breach or claimed breach of this Agreement or transactions contemplated by this Agreement may be brought by either party more than one (1) year after the cause of action has accrued. For purposes of this Agreement, a cause of action will be deemed to have occurred when a party knew or reasonably should have known of the breach or claimed breach.

11. Intellectual Property Warranty and Indemnification

11.1. <u>IF Warranty</u>. Licensor warrants to Customer that it and its suppliers have sufficient rights to the Software to provide the license grants and fulfill its other obligations under the terms of this Agreement. The Customer's sole and exclusive remedy for breach of this warranty is indemnification as provided for in this Agreement.

11.2. <u>Infringement Indemnity</u>. Licensor agrees to defend, indemnify, and hold Customer harmless from and against any and all costs, judgments, damages and awards in lawsuits, proceedings or actions brought by any third party, and costs in connection with the defense thereof (including, without limitation, court fees nd reasonable attorney's fees), resulting from any claim or allegation that the Software infringes any patent, copyright, trade secret or other proprietary right of any third party ("Claims").

11.3. <u>Limitation of Indemnification</u>. The obligations set forth in Section 10.2 will not apply to, and Licensor assumes no liability for, any Claims to the extent arising from (i) use of a modified version of the Software, (ii) the combination, operation or use of the Software with non-Licensor programs, data, methods or technology if such infringement would have been avoided without the combination, operation or use of the Software with other programs, data, methods or technology, or (iii) unlicensed use of the Software.

11.4. <u>Procedure for Indemnification</u>. Licensor's obligations under Section 10.1 and 10.2 applies only if Customer gives Licensor: (i) prompt written notice of the Claim; (ii) sole control of the defense and settlement of such Claims; and (iii) assistance reasonably requested by Licensor at Licensor's expense.

11.5. <u>Actions by Licensor</u>. In the event any such infringement, Claim, action or allegation is brought or threatened or if Licensor deems that there is a material risk of a Claim, Licensor may, at its sole option and expense.

  11.5.1. procure for Customer the right to continue its use of the Software; or

  11.5.2. modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or, if neither of the foregoing is commercially practicable,

  11.5.3. terminate this Agreement.

11.6. <u>Exclusive Remedy</u>. This Section 10 states the entire liability of Licensor and Customer's exclusive remedy with respect to actual or alleged infringement of any patent, copyright, trade secret or other proprietary right.

12. Confidentiality

12.1. "Confidential Information" means non-public information, technical data or know-how of a party and/ or its Subsidiaries, which is furnished to the other party in written or tangible form in connection with this Agreement. Oral disclosure will also be deemed Confidential Information if it would reasonably be considered to be of a confidential nature or if it is confirmed at the time of disclosure to be confidential. [The parties agree that Licensor's Confidential Information includes this Agreement and its terms, the Documentation, binary copies of the Software, source code relating to the Software, and any other proprietary information supplied to Customer by Licensor, or by Customer to Licensor and marked as "confidential information" or the like.] Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving party and not subject to a confidentiality obligation to the providing party; (ii) independently developed by the receiving party; (iii) publicly disclosed through no fault of the receiving party; (iv) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential; (v) approved for release by written agreement with the disclosing party; or (vi) disclosed pursuant to the

requirements of law, regulation, or court order.

12.2. Neither party will use the other party's Confidential Information during the term of this Agreement except as reasonably required for the performance of this Agreement. In addition, the confidentiality obligations set forth in this Section 12 will survive for five (5) years after the termination or expiration of this Agreement. Each party will hold in confidence the other party's Confidential Information by means that are no less restrictive than those used for its own confidential materials. Each party agrees not to disclose the other party's Confidential Information to anyone other than its employees or subcontractors who are bound by confidentiality obligations and who need to know the same' to perform such party's obligations hereunder. In case a party receives legal process that demands or requires disclosure of the disclosing party's Confidential Information, such party will give prompt notice to the disclosing party, if legally permissible, to enable the disclosing party to challenge such demand.

12.3. Injunctive Relief. In the event of actual or threatened breach of the provisions of Section 12, the non-breaching party will have no adequate remedy at law and will be entitled to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

13. Verification of Proper Use; Audit

13.1. Licensor by its employees or agents may audit, with thirty (30) days' prior written notice, Customer's available records related to the use of the Software, to verify that Customer's use of the Software is in accordance to the constraints of this Agreement. Licensor will bear the expense of an audit with the exception of instances where the Customer is found, through such an audit, to be materially in violation of this Agreement, in which case, Customer will reimburse Licensor for the time, travel and material costs and fees reasonably associated with the audit. The audit and its results will be subject to the restrictions of this Agreement regarding Confidential Information.

14. Term and Termination

14.1. Term. This Agreement will take effect on the Effective Date and will remain in force until terminated in accordance with this Agreement.

14.2. Termination. This Agreement is terminated as elsewhere provided in the Agreement or as follows:

14.2.1. Termination without Cause. Customer may terminate this Agreement upon thirty (30) days' prior written notice to Licensor, with or without cause.

14.2.2. Termination with Cause. Either party may terminate this Agreement and its license grants by written notice upon the occurrence of any of the following events: (i) in the event the other party materially fails to comply with any of the terms and conditions of this Agreement and such default has not been cured within thirty (30) days after receiving written notice of the breach; or (ii) in the event the other party (A) terminates or suspends its business, (B) becomes subject to any bankruptcy or insolvency proceeding under Federal or state law, (C) becomes insolvent or subject to control by a trustee, receiver or similar authority, or (D) has wound up or liquidated, voluntarily or otherwise.

14.2.3. Effect of Termination. All licenses terminate upon termination of this Agreement. Termination does not entitle Customer to any refund or return of payment except as expressly stated in this Agreement. Within fourteen (14) days after the date of termination or discontinuance of this Agreement, Customer shall erase or destroy all copies of the Software and the Documentation and all Confidential Information in its possession. Upon request, Customer shall furnish Licensor with a certificate signed by an executive officer of Customer verifying that the same has been done. The following provisions will survive termination: 6 (Ownership), 9 (Exclusions and Limitations), 10 (Intellectual Property and Indemnification), 12 (Confidentiality), 12 (Verification Audit), 13 (Effect of Termination) and 22-28 (Miscellaneous other sections), along with accrued financial obligations.

15. Viruses and Disabling Devices.
Neither the Software nor any enhancements, modifications, upgrades, updates, revisions or releases thereof shall contain (i) any mechanism such as a "trap door," "time bomb," or "logic bomb," software protection routine or other similar device, that would enable Licensor to disable the Software or make the Software inaccessible to Customer after the Software is installed; or (ii) to the best of Licensor's knowledge, any computer "virus," "worm" or similar programming routine. This excludes the process of utilizing proper software installation codes to maintain ones active software license.

16. Assignment

16.1. Either party may assign this Agreement together with the Software license to a Subsidiary or in connection with

a sale of all or substantially all of its assets or stock, provided each assignee or successor party agrees in writing delivered to the non-assigning party to be bound by all terms and conditions of this Agreement, except that Customer may not assign this Agreement or the license to a competitor of Licensor.

16.2.   In the case of the transfer of all or substantially all of Customer's assets or stock (a "Transaction") to an entity that prior to the Effective Date of this Agreement held no controlling interest in Customer, the license under this Agreement shall be restricted to Customer and its Subsidiaries as constituted prior to the acquisition. In such a case, Licensor will have no obligation to extend price discounts or any other non-standard terms and conditions to operations of the acquiring or new controlling entity's businesses outside the scope of the businesses or operations of Customer as they existed before the Transaction.

16.3.   The terms and provisions of this Agreement will be binding upon and inure to the benefit of the parties to this Agreement and to their respective heirs, successors, and assigns.

17. **Notice**. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, (c) sent by overnight air courier, or (d) transmitted by facsimile, in each case properly posted to the appropriate address set forth below. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices are effective on receipt.

18. **Force Majeure**. Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded.

19. **Waiver.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. Except as expressly stated in this Agreement, no exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

20. **Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

20.1.   Standard Terms of Customer. No terms, provisions or conditions of any purchase order, acknowledgment or other business form that Customer may use in connection with the acquisition or licensing of the Software will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Licensor to object to such terms, provisions or conditions.

20.2.   Amendments to This Agreement. This Agreement may not be amended, except by a writing signed by both parties.

20.3.   Licensor's Prior Consent. Unless expressly provided otherwise in this Agreement, any prior consent of Licensor that is required before Customer may take an action may be granted or withheld in Licensor's sole and absolute discretion.

20.4.   Export of Software. Customer may not export or re-export this Software without the prior written consent of Licensor and without compliance with applicable US export control laws.

20.5.   Public Announcements. Customer acknowledges that Licensor may desire to use its name and logo in its web site, press releases, product brochures and financial reports indicating that Customer is a customer of Licensor, and Customer agrees that Licensor may use its name and logo in such a manner. Customer reserves the right to review any use of its name or logo and to grant or withhold permission, provided that permission will not reasonably be withheld.

20.6.   Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one instrument. Execution by fax is permitted.

21. **Cooperation Agreement.**   Licensor will cooperate with Customer to support Customer's business needs in providing services and materials under this Agreement.   To assist Customer, Licensor can provide estimates of the time and costs involved for work to be performed.   However, many factors affecting costs and completion dates are beyond Licensor' control, such as the extent to which Customer cooperates with Licensor to assist in completing the services, availability and fluctuating costs of materials, hardware and or software product failures, and Customer requested additional products or services.   Because of these variables, Licensor cannot guarantee that it will complete or deliver its services and materials described or as committed.   Estimates provided by Licensor are based on information Customer supplied to Licensor, the applicable Licensor price and service rates, and an estimate of the hours of work and materials required.   Customer understands that in the spirit of cooperation, they will reasonably participate with Licensor staff and provide resources as needed by Licensor to perform its services to Customer.   In the event the Customer does not reasonably participate with the Licensor staff, Licensor reserves the right to cancel the contract and withdraw from the engagement.   Customer understands that any form of payment withholding with regard to any circumstances outlined above, constitutes a delinquent payment and subjects them to late fees and interest as well as our right to stop work and support.

22. **Independent Relationship.**   The parties are independent contractors.   Neither party has any express or implied right or authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement or undertaking with any unaffiliated third party.   The parties will not be deemed or intended to have created any relationship with characteristics of an agency, partnership, employment, or joint venture.   Licensor may use contractors to provide certain services to Customer.   Such services shall be provided in accordance with this Agreement.   Customer acknowledges that it shall have no right to control the manner, means, or method by which Licensor performs its services pursuant to this Agreement.   Customer agrees that during the course of this Agreement and for a period of two (2) years the termination of this Agreement, Customer shall not directly or indirectly solicit or entice any of the following to cease, terminate or reduce any relationship with Licensor or to divert any business from Licensor through: (a) any employee, consultant or representative of Licensor; or (b) any contractor, vendor, or supplier of Licensor.   Further, Customer will not directly or indirectly disclose the names, addresses, telephone numbers, compensation, or arrangements between Licensor and any person or entity described in (a) or (b) above to any competitor of Licensor.   Notwithstanding the foregoing, Customer may hire a current or former employee(s) of Licensor upon Licensor' written consent, which may be withheld for any reason or for no reason.

23. **Title.**   Performing this Agreement does not affect the present or future rights of Customer or Licensor under any law and does not grant any express or implied right to the receiving party to or under the disclosing party's copyrights, trademarks, trade secrets, or patents or be construed as granting any license or other legal right to the other party.   However, Customer's entry into this Agreement and/or use of the Software constitutes agreement to the End-User License Agreement included within the Software.   Customer shall not alter, remove, deface, or obscure any notice of trademark, trade name, patent, copyright, proprietary right or trade secret on any work product delivered by Licensor and will not add to any additional trademark or trade name to that work product.   The Software and any copies that Licensor authorizes Customer to make are owned by Licensor and its suppliers.   The structure, organization and code of the Software are the valuable trade secrets and Confidential Information of Licensor, Inc. and its suppliers.   Any and all improvements, inventions or discoveries, including but not limited to changes to computer software or hardware, that are made or conceived by either party, whether alone or with others, which are included in or that result, arise, or are derived from Licensor' Services under this Agreement or a similar arrangement between the parties will belong to Licensor.   Customer agrees to assign its entire right, title, and interest in any such improvements to Licensor.   Customer also acknowledges the possibility of irreparable harm and damage to Licensor, not measurable in money damages, arising from Customer's failure to perform all the terms and conditions of this Agreement, including but not limited to the protection of Licensor' intellectual property rights and breach of this Agreement.   Customer agrees that any such failure is so serious as to warrant injunctive relief, without the necessity of posting bond, as well as monetary damages, if any, and any other remedy available at law or in equity.   Any delay in Licensor' seeking to enforce its rights shall not compromise Licensor' ability to enforce its rights at a later date.

24. **Indemnity.**   Customer shall be responsible for the accuracy and completeness of the information Customer furnishes to Licensor.   It will be Customer's responsibility to review any and all work product prepared by Licensor under this Agreement for accuracy.   Except in cases where Licensor is solely negligent or engages in willful misconduct, Customer shall indemnify, hold harmless and defend Licensor, its officers, employees, agents, independent contractors, and assignees, against any and all claims, suits, losses, damages, costs, fees and expenses resulting from or arising out of this Agreement including but not limited to, any damages, losses or liabilities whatsoever with respect to death or injury to any person and damage to any property arising from Customer's possession, use or operation of the work product produced by Licensor.

25. **Entire Agreement.** This Agreement and any Statement of Work forms signed by the parties constitute the entire agreement among the parties, supersedes all prior agreements between the parties with respect to such subject matter and may be modified only by written agreement of the parties as provided herein. Customer and Licensor may be referred to individually as a "party," or collectively as "the parties". No amendments or modifications to this Agreement shall be effective unless both parties sign a new written agreement. Each party represents and warrants to the other that it has full right, power and authority to enter into and perform this Agreement in accordance with the provisions hereof and that the execution and delivery of this Agreement has been duly authorized. Any additional or different terms provided by Customer to this Agreement are deemed to be material alterations and notice of objection to and rejection of them is hereby given. This Agreement may be executed in two (2) or more counterparts, all of which, taken together, shall be regarded as one and the same instrument. This Agreement is binding on the parties, their respective heirs, personal representatives, successors and assigns. Any claim arising under or relating to this Agreement shall be governed by the laws of the State of Washington without regard to conflict of laws. Each party hereby agrees that the courts located in Clark County of the State of Washington shall have sole jurisdiction and venue for all disputes and litigation arising under or relating to this Agreement. Communications by Licensor to Customer at the email, fax number, and physical addresses listed on this Agreement shall constitute notice to Customer. Customer will notify Licensor if it changes its email or facsimile transmission. In the event that suit or action is instituted to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover its attorney fees, including those incurred on appeal and in bankruptcy court proceedings, as determined by the court. The parties agree to negotiate substitute language to nearly replace any part of this Agreement that is found to be invalid or unenforceable. The remaining Agreement will still be valid and enforceable absent the severable language. If this Agreement is terminated, the remaining sections of this Agreement, especially those relating to confidentiality and ownership of intellectual property, shall survive. Licensor may assign its rights or delegate its obligations or any part thereof under this Agreement without prior consent from Customer. Customer may not assign its rights or delegate its obligations without Licensor' prior written consent. The terms and conditions of this Agreement shall bind and endure to each party's successors and assigns.

26. **Successors.** Customer will notify Licensor, Inc. in writing that they have either sold their company or substantially all of their assets to a successor organization constituting a sale of their business. Such notice shall contain the new parties name, address and contact information, as well as acknowledge they are assuming the existing support agreement. Only under such notification is the Customer authorized to transfer the Licensor license agreement.

27. **Governing Law Disputes and Severability.** This Agreement shall be construed in accordance with the laws of the State of Washington. If any provision of this agreement is held by any court or in any arbitration to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

28. **Mediation/Arbitration.** Excepting matters for injunctive relief, any claim or controversy arising out of or relating to the Agreement, including, without limitation, the performance, or interpretation of the Agreement, shall be settled either by mediation instituted at the request of either party, or if not resolved by mediation, by arbitration. Any mediation or arbitration will be in Vancouver, Washington, unless otherwise agreed to by both parties. Judgment on any arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy, including but not limited to the Superior Court of Clark County Washington.

29. **Attorney Fees.** In the event any suit or action is filed to enforce or interpret the terms and obligations of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs, including reasonable post-judgment attorney fees incurred in collection efforts.