Software License and Services Agreement

This Software License and Services Agreement (the "**Agreement**"), effective as of the date of Licensee's acceptance (the "**Effective Date**"), is by and between ESH COMPUTER CENTER, INC. d/b/a EAGLE BUSINESS SOFTWARE, a Pennsylvania corporation, with offices located at 5351 Lincoln Hwy, Gap, PA 17527 ("**Licensor**") and the undersigned customer ("**Licensee**"). Licensor and Licensee may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Licensor has submitted a proposal to Licensee to, among other things, license the Software to Licensee (the "**Proposal**"), which is hereby incorporated herein in its entirety by reference;

WHEREAS, Licensee desires to obtain a license to use the Software for its internal business purposes, subject to the terms and conditions of this Agreement; and

WHEREAS, Licensee further desires to retain Licensor to provide certain software and technology support services related to the Software upon the terms and conditions hereinafter set forth (the "**Services**"), and Licensor is willing to perform such Services.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1.   Definitions.

"**Acceptance Criteria**" means the specifications and Documentation provided by Licensor and any other requirements set forth in this Agreement.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise/ownership of more than 50% of the voting securities of a Person.

"**Authorized User**" means each of the individual users of Licensee and/or its affiliates authorized to use the Software.

"**Business Day**" means a day other than a Saturday, Sunday, or other day on which commercial banks in Harrisburg, Pennsylvania are authorized or required by Law to be closed for business.

"**Confidential Information**" has the meaning set forth in Section 9.1.

"**Deliverables**" means all documents, work product and other materials that are delivered to Licensee hereunder or prepared by or on behalf of Licensor in the course of performing the Services.

"**Disclosing Party**" has the meaning set forth in Section 9.1.

"**Documentation**" means Licensor's user manuals, handbooks, and installation guides relating to the Software that Licensor provides or makes available to Licensee in any form or medium which describe the functionality, components, features, or requirements of the Software, including any aspect of the installation, configuration, integration, operation, or use of the Software.

"**Effective Date**" has the meaning set forth in the preamble.

"**Force Majeure Event**" has the meaning set forth in Section 15.11.

"**Indemnitee**" has the meaning set forth in Section 12.3.

"**Indemnitor**" has the meaning set forth in Section 12.3.

"**Initial Term**" has the meaning set forth in Section 14.1.

"**Intellectual Property Rights**" means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"**Licensee**" has the meaning set forth in the preamble.

"**Licensee Equipment**" means any equipment, systems, or facilities provided by Licensee and used directly or indirectly in the provision of the Services.

"**Licensee Indemnitee**" has the meaning set forth in Section 12.1.

"**Licensee Materials**" means any documents, data, know-how, methodologies, software and other materials provided to Licensor by Licensee, including computer programs, reports and specifications.

"**Licensor Equipment**" means any equipment, systems or facilities provided by or on behalf of Licensor and used directly or indirectly in the provision of the Services.

"**Licensor Indemnitee**" has the meaning set forth in Section 12.2.

"**Licensor Personnel**" means all employees and subcontractors, if any, engaged by Licensor to perform the Services.

"**Loss**" or "**Losses**" means all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**Maintenance Release**" means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Licensor may provide to Licensee from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software, but does not include any New Product.

"**New Product**" means any new version of the Software that Licensor may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Licensor's designation of a new version number or product name), and which Licensor may make available to Licensee at an additional cost under a separate written agreement.

"**Open Source Components**" means any software component that is subject to any open source license agreement, including any software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative.

"**Open Source License**" has the meaning set forth in Section 2.3.

"**Parties**" has the meaning set forth in the preamble.

"**Party**" has the meaning set forth in the preamble.

"**Payment Failure**" has the meaning set forth in Section 14.3(a).

"**Permitted Use**" means use of the Software by an Authorized User for the benefit of Licensee in the ordinary course of its internal business operations.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"**Receiving Party**" has the meaning set forth in Section 9.1.

"**Renewal Term**" has the meaning set forth in Section 14.2.

"**Representatives**" means, with respect to a Party, that Party's employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

"**Remote Services**" means the delivery of Services remotely over the internet through the use of Remote Access Software that Licensor installs on Licensee's network, systems, and/or computers.

"**Software**" means collectively, the computer software identified on the Proposal and all components thereof, including without limitation, all updates, modifications, enhancements, customizations integrated web pages and/or websites built by Licensor, integrated mobile applications built by Licensor, and other derivative works thereto, and all Documentation relating to the Software or the use thereof provided by the Licensor to Licensee in accordance with this Agreement.

"**Term**" has the meaning set forth in Section 14.2.

"**Territory**" means the United States of America.

"**Third-Party Materials**" means materials and information, in any form or medium, that are not proprietary to Licensor, including any third-party: (a) documents, data, content or specifications; (b) Open Source Components or other software, hardware or other products, facilities, equipment or devices; and (c) accessories, components, parts or features of any of the foregoing.

"**Warranty Period**" has the meaning set forth in Section 11.2.

2.   License.

2.1   License Grant. Subject to and conditioned on Licensee's payment of fees and compliance with all other terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 15.8) license to use the Software solely for the Permitted Use in the Territory during the Term.

2.2   Scope of Licensed Access and Use. Licensee may install, use, and run one copy of the Software on Licensee's server. The total number of Authorized Users who may concurrently access and use the Software shall not exceed the total number of Authorized Users as set forth in the Proposal. Licensee may make one copy of the Software solely for testing, disaster recovery, or archival purposes. Any copy of the Software made by Licensee:

(a) will remain the exclusive property of Licensor; (b) be subject to the terms and conditions of this Agreement; and (c) must include all copyright or other Intellectual Property Rights notices contained in the original. Any additional licenses purchased by Licensee from Licensor shall be subject to the terms and conditions of this Agreement.

2.3   Open Source Licenses. To the extent the Software includes any Open Source Components, such Open Source Components may be subject to separate open source licenses (each, an "**Open Source License**"). Any use of the Open Source Components by Licensee is governed by, and subject to, the terms and conditions of the Open Source License(s).

2.4   Security Measures. The Software may contain technological measures designed to prevent unauthorized or illegal use of the Software. Licensee acknowledges and agrees that: (a) Licensor may use these and other lawful measures to verify Licensee's compliance with the terms of this Agreement and enforce Licensor's rights, including all Intellectual Property Rights, in and to the Software; (b) Licensor may deny any individual access to and/or use of the Software on written notice to Licensee if Licensor, in its reasonable discretion, believes that person's use of the Software would violate any provision of this Agreement, regardless of whether Licensee designated that person as an Authorized User; and (c) Licensor and its Representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Licensee's computers, systems and software, that Licensor may gather periodically to improve the performance of the Software or develop Maintenance Releases. This information will be treated in accordance with Licensor's privacy policy, as amended from time to time, which can be viewed at: www.eaglebusinesssoftware.com or a successor website address.

3.   License Restrictions. Except as this Agreement expressly permits, and subject to Section 2.3 with respect to Open Source Components, Licensee shall not, and shall not permit any other Person to:

(a)   copy the Software, in whole or in part;

(b)   modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of any Software;

(c)   rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software to any third party;

(d)   reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;

(e)   bypass or breach any security device or protection used for or contained in the Software or Documentation;

(f)   remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols,

notices, marks, or serial numbers on or relating to any copy of the Software or Documentation;

      (g)   use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable Law;

      (h)   use the Software for purposes of: (i) benchmarking or competitive analysis of the Software; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage;

      (i)   use the Software in or in connection with the design, construction, maintenance, operation, or use of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Software could lead to personal injury or severe physical or property damage; or

      (j)   use (i) the Software or Documentation other than for the Permitted Use or in any manner or for any purpose or application not expressly permitted by this Agreement or (ii) any Open Source Components in any manner or for any purpose or application not expressly permitted by the controlling Open Source License.

4.   <u>Delivery</u>. If Licensee does not already have a copy of the Software, Licensor shall deliver one copy of the Software electronically, on tangible media, or by other means, to Licensee by a date agreed to by both parties.

5.   <u>Acceptance</u>.

5.1   If Licensee does not already have a copy of the software, Licensee has ten (10) days after the delivery date to test whether the Software conforms in all material respects to the Acceptance Criteria. If Licensee believes that the Software fails to conform in any material respect to the Acceptance Criteria, Licensee must provide written notice to Licensor detailing the non-compliance, and Licensor will either correct the non-conformities or provide an acceptable workaround in a timely manner. If Licensee does not send written notice within ten (10) days after the delivery date the Software will be deemed accepted.

5.2   If Licensee already has a copy of the Software as of November 1st, 2019, then the Software will be deemed accepted on December 1st, 2019 if Licensee uses the Software or services after November 30th, 2019.

6.   <u>Services and Maintenance Releases</u>.

6.1   During the Term, Licensor will provide the Services to Licensee, as described in more detail in the Proposal, in accordance with the terms and conditions of this Agreement.

6.2   Remote Services. Licensee acknowledges and agrees that Licensor may provide Remote Services to Licensee to assist in performing the Services. Licensee agrees to provide Licensor with access to Licensee's network, system, and/or computers to install and use remote access software ("**Remote Access Software**") necessary for Licensor to provide the Remote Services to Licensee. The Remote Access Software contains technological measures designed to collect and transmit to Licensor certain diagnostic, technical, usage and related information, including information about Licensee's computers, systems, and network, relating to the Services. Licensee acknowledges and agrees that: (a) Licensor may collect, maintain, process and use this information in the course of performing the Services under this Agreement, provided that Licensor shall only access, control and gather such information that it reasonably believes to be necessary to provide the Services; and (b) all or portions of the Remote Access Software may remain on Licensee's network, system, and/or computers after an incident is resolved.

6.3   Licensor Obligations. In conducting the Services, Licensor:

(a)   before the date on which the Services are to start, shall obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant Laws applicable to the provision of the Services;

(b)   prior to any Licensor Personnel performing any Services hereunder, at its sole cost and expense, may conduct background checks or other types of employment screenings on such Licensor Personnel;

(c)   shall comply with, and ensure that all Licensor Personnel comply with, all rules, regulations and policies of Licensee that are communicated to Licensor in writing, including security procedures concerning systems and data and the remote access thereto, building security procedures, including the restriction of access by Licensee to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures; and

(d)   shall maintain complete and accurate records relating to the provision of the Services under this Agreement, in such form as Licensee shall approve. During the Term, upon Licensee's written request, Licensor shall allow Licensee or Licensee's representative to inspect and make copies of service records and interview Licensor Personnel in connection with the provision of the Services; *provided that* any such inspection shall take place during regular business hours no more than once per year and Licensee provides Licensor with at least ten (10) business days advance written notice.

6.4   Licensor Personnel. Licensor is responsible for all Licensor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

6.5   Subcontractors. Licensor may, in its sole discretion, perform any of the Services by or through third parties (each, a "**Subcontractor**") or any other Licensor Personnel.

6.6   Maintenance Releases. During the Term, and so long as Licensee is not in breach of the terms and conditions of this Agreement, Licensor will provide Licensee with all Maintenance Releases (including updated Documentation) that Licensor makes available to its licensees, at no additional charge. All Maintenance Releases provided by Licensor to Licensee are deemed Software. Licensee will install all Maintenance Releases as soon as practicable after receipt. Licensee does not have any right under or in connection with this Agreement to receive any New Products that Licensor may, in its sole discretion, release from time to time.

6.7   Licensee Obligations: With respect to the Services, Licensee shall:

(a)   cooperate with Licensor in all matters relating to the Services;

(b)   provide such access to Licensee's premises, and such office accommodation and other facilities as may reasonably be requested by Licensor, for the purposes of performing the Services;

(c)   respond promptly to any Licensor request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Licensor to perform Services in accordance with the requirements of this Agreement;

(d)   provide such Licensee Materials and information as Licensor may reasonably request, in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects;

(e)   ensure that all Licensee Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant legal or industry standards or requirements;

(f)   obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services, the installation of Licensor Equipment, the use of Licensee Materials and the use of the Licensee Equipment in relation to the Licensor Equipment, in all cases before the date on which the Services are to start; and

(g)   keep, maintain and insure the Licensor Equipment in good condition and in accordance with Licensor's instructions as notified in writing from time to time, and shall not dispose of or use Licensor Equipment other than in accordance with Licensor's written instructions or authorization.

6.8   Licensee's Acts Resulting in Delay. If Licensor's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Licensee, Licensor shall not be deemed in breach of its obligations under this Agreement or

otherwise liable for any costs, charges or losses sustained or incurred by Licensee, in each case, to the extent arising directly or indirectly from such prevention or delay.

      6.9   Additional Products and/or Services. During the Term, Licensor may provide Licensee with additional products and/or services related to the installation, customization, modification, use and operation of the Software or other computer and software systems, which, unless otherwise specifically agreed to by the parties in writing, shall be subject to and governed by the terms and conditions of this Agreement. Separate proposals may be submitted for these additional products and/or services. During the term, Licensor and Licensee may enter into separate Professional Services Agreements and/or delineate specific product and/or service engagement details in a proposal, project scope, statement of work, or similar document, the terms of which are hereby incorporated herein by reference.

7.   Fees and Payment.

      7.1   License and Service Fees. Licensee shall pay Licensor the license and service fees set forth in the Proposal in accordance with the Proposal and the terms of this Section 7. The Licensor shall have the right at its discretion to increase the annual license and service fees for the next Renewal Term.

      7.2   Taxes. All fees and other amounts payable by Licensee under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Licensee is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Licensee hereunder, other than any taxes imposed on Licensor's income.

      7.3   Payment. Licensee shall pay all amounts due and owing under this Agreement within fifteen (15) days after the date of Licensor's invoice therefor, unless different terms are mutually agreed upon in advance. Payment shall be sent to the address or account specified in the Proposal or such other address or account as Licensor may specify in writing from time to time. Licensee shall make all payments hereunder in US dollars as follows:

      (a)   Invoices for Recurring Subscription or Services:

      (i)   If paid annually in advance, payments for recurring subscription or services shall be made by check, ACH, or wire transfer.

      (ii)   If not paid annually in advance, Licensor must enroll in automatic payments and provide Licensor with valid payment information and keep valid payment information on file during the term of this agreement. Automatic payments shall be initiated by Licensor and shall be made by debit card, credit card or ACH. Automatic payments will be charged to your specified payment method on or soon after the invoice due date.

      (b)   Other Invoices. Other invoices shall be paid by check, ACH, wire transfer, debit card or credit card.

7.4   Late Payment. If Licensee fails to make any payment when due then, in addition to all other remedies that may be available to Licensor:

(a)   Licensor may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

(b)   Licensee shall reimburse Licensor for all reasonable costs incurred by Licensor in collecting any late payment of amounts due or related interest, including attorneys' fees, court costs, and collection agency fees; and

(c)   if such failure continues for ten (10) days following written notice thereof, Licensor may: (i) disable Licensee's use of the Software (including by means of a disabling code, technology or device); (ii) withhold, suspend or revoke its grant of a license hereunder; and/or (iii) terminate this Agreement under Section 14.3(a) or Section 14.3(b), as applicable.

7.5   No Deductions or Setoffs. All amounts payable to Licensor under this Agreement shall be paid by Licensee to Licensor in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

8.   Audits.

8.1   Audit Procedure. Licensor or its nominee (including its accountants and auditors) may, on twenty-four (24) hours' notice, inspect and audit Licensee's use of the Software under this Agreement at any time during the Term. All audits will be conducted during regular business hours and in a manner that does not unreasonably interfere with Licensee's business operations. Licensee shall make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Licensor with respect to such audit. Licensor shall only examine information directly related to Licensee's use of the Software.

8.2   Cost and Results of Audit. If the audit determines that Licensee's use of the Software exceeded the usage permitted by this Agreement, Licensee shall pay to Licensor all amounts due for such excess use of the Software, plus interest on such amounts, as calculated pursuant to Section 7.4(a). If the audit determines that such excess use equals or exceeds of Licensee's permitted level of use, Licensee shall also pay to Licensor all reasonable costs incurred by Licensor in conducting the audit. Licensee shall make all payments required under this Section 8.2 within ten (10) days of the date of written notification of the audit results. If no excess usage is found, Licensor shall reimburse Licensee for any reasonable costs incurred by Licensee in cooperating with the audit within ten (10) days of the date of written notification of the audit results.

9.   Confidentiality.

9.1   Confidential Information. In connection with this Agreement, each Party (the "**Disclosing Party**") may disclose or make available Confidential Information to the other

Party (the "**Receiving Party**"). Subject to Section 9.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated, or otherwise identified as "confidential." Without limiting the foregoing, the Software and Documentation are the Confidential Information of Licensor.

9.2   Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) that was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

9.3   Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for the entirety of the Term and for five (5) years following the termination of this Agreement:

(a)   not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b)   except as may be permitted under the terms and conditions of Section 9.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9;

(c)   safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;

(d)   promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure; and

(e)   ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 9.

Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 9 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

9.4   Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party will: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.3; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 9.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party will disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, will use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

10.   Intellectual Property Rights.

10.1   Intellectual Property Ownership. Licensee acknowledges and agrees that:

(a)   the Software and Documentation are licensed, not sold, to Licensee by Licensor and Licensee does not have under or in connection with this Agreement any ownership interest in the Software or Documentation, or in any related Intellectual Property Rights;

(b)   Licensor is the sole and exclusive owner of all right, title and interest in and to the Software and Documentation, including all Intellectual Property Rights relating thereto, subject only to the rights of third parties in Open Source Components and the limited license granted to Licensee under this Agreement; and

(c)   Licensee hereby unconditionally and irrevocably assigns to Licensor its entire right, title and interest in and to any Intellectual Property Rights that Licensee may now or hereafter have in or relating to the Software or Documentation (including any rights in derivative works or patent improvements relating to either of them), whether held or acquired by operation of law, contract, assignment or otherwise.

10.2   Licensee Cooperation and Notice of Infringement. Licensee shall, during the Term:

(a)   take all commercially reasonable measures to safeguard the Software and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access;

(b)   at Licensor's expense, take all such steps as Licensor may reasonably require to assist Licensor in maintaining the validity, enforceability and Licensor's ownership of the Intellectual Property Rights in the Software and Documentation;

(c)   promptly notify Licensor in writing if Licensee becomes aware of: (i) any actual or suspected infringement, misappropriation or other violation of Licensor's Intellectual Property Rights in or relating to the Software or Documentation; or (ii) any claim that the Software or Documentation, including any production, use, marketing, sale or other disposition of the Software or Documentation, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any Person; and

(d)   fully cooperate with and assist Licensor in all reasonable ways in the conduct of any Action by Licensor to prevent or abate any actual or threatened infringement, misappropriation or violation of Licensor's rights in, and to attempt to resolve any Actions relating to, the Software or Documentation, including having Licensee's employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens and the like.

10.3   No Implied Rights. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Licensee or any third party any Intellectual Property Rights or other right, title, or interest in or to any of the Software or Documentation.

11.   Representations and Warranties.

11.1   Mutual Representations and Warranties. Each Party represents, warrants and covenants to the other Party that:

(a)   it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b)   it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants and is required to grant under this Agreement;

(c)   the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and

(d)   when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

11.2   Limited Warranty. Subject to the limitations and conditions set forth in Section 11.3 and Section 11.4, Licensor warrants to Licensee that for a period of sixty (60) days from the Effective Date (the "**Warranty Period**"):

(a)   the Software will substantially conform in all material respects to the specifications in the Documentation, when installed, operated and used as recommended in the Documentation and in accordance with this Agreement.

11.3   Licensee Requirements. The limited warranties set forth in Section 11.2 apply only if Licensee: (a) notifies Licensor in writing of the warranty breach before the expiration of the Warranty Period; (b) has promptly installed all Maintenance Releases to the Software that Licensor previously made available to Licensee; and (c) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all license fees then due and owing).

11.4   Exceptions. Notwithstanding any provisions to the contrary in this Agreement, the limited warranty set forth in Section 11.2 does not apply to problems arising out of or relating to:

(a)   Software, or the media on which it is provided, that is modified or damaged by Licensee or its Representatives;

(b)   any operation or use of, or other activity relating to, the Software other than as specified in the Documentation, including any incorporation in the Software of, or combination, operation or use of the Software in or with, any technology (including any software, hardware, firmware, system or network) or service not specified for Licensee's use in the Documentation;

(c)   Licensee's or any third party's negligence, abuse, misapplication or misuse of the Software, including any use of the Software other than as specified in the Documentation;

(d)   Licensee's failure to promptly install all Maintenance Releases that Licensor has previously made available to Licensee;

(e)   the operation of, or access to, Licensee's or a third party's system or network;

(f)   any Open Source Components, beta software, software that Licensor makes available for testing or demonstration purposes, temporary software modules or software for which Licensor does not receive a license fee;

(g)   Licensee's breach of any provision of this Agreement; or

(h)   any other circumstances or causes outside of the reasonable control of Licensor (including abnormal physical or electrical stress).

11.5   Remedial Efforts. If Licensor breaches, or is alleged to have breached, any of the warranties set forth in Section 11.2, Licensor may, at its sole option and expense, take any of the following steps to remedy such breach:

(a)   replace any damaged or defective media on which Licensor supplied the Software;

(b)   amend, supplement or replace any incomplete or inaccurate Documentation;

(c)   repair the Software; and/or

(d)   replace the Software with functionally equivalent software (which software will, on its replacement of the Software, constitute Software hereunder).

The remedies set forth in this Section 11.5 are Licensee's sole remedies and Licensor's sole liability under the limited warranty set forth in Section 11.2.

11.6   DISCLAIMER OF WARRANTIES. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 11.2, ALL LICENSED SOFTWARE, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY LICENSOR ARE PROVIDED "AS IS." LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE OR DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEMS, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL OPEN SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN LICENSEE AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN SOURCE COMPONENTS AND THIRD-PARTY MATERIALS.

12.   Indemnification.

12.1   Licensor Indemnification. Licensor shall indemnify, defend, and hold harmless Licensee and Licensee's officers, directors, employees, agents, permitted successors and permitted assigns (each, a "**Licensee Indemnitee**") from and against any and all Losses incurred by a Licensee Indemnitee resulting from any Action by a third party caused by the

gross negligence or willful misconduct of Licensor or its Representatives or that the Software or Documentation, or any use of the Software or Documentation in accordance with this Agreement, infringes or misappropriates such third party's US Intellectual Property Rights/US patents, copyrights, or trade secrets. This Section 12.1 does not apply to the extent that the alleged infringement arises from:

      (a)   Third-Party Materials;

      (b)   combination, operation, or use of the Software in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Licensor or specified for Licensee's use in the Documentation, unless otherwise expressly permitted by Licensor in writing;

      (c)   modification of the Software other than: (i) by Licensor or its contractor in connection with this Agreement; or (ii) with Licensor's express written authorization and in strict accordance with Licensor's written directions and specifications;

      (d)   use of any version of the Software other than the most current version or failure to timely implement any Maintenance Release, modification, update or replacement of the Software made available to Licensee by Licensor;

      (e)   use of the Software after Licensor's notice to Licensee of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights;

      (f)   negligence, abuse, misapplication, or misuse of the Software or Documentation by or on behalf of Licensee, Licensee's Representatives, or a third party;

      (g)   use of the Software or Documentation by or on behalf of Licensee that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to Licensor's instructions;

      (h)   events or circumstances outside of Licensor's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or

      (i)   Third-Party Claims or Losses for which Licensee is obligated to indemnify Licensor pursuant to Section 12.2.

12.2   Licensee Indemnification. Licensee shall indemnify, defend, and hold harmless Licensor and its Affiliates, and each of its and their respective officers, directors, employees, agents, subcontractors, successors and permitted assigns (each, a "**Licensor Indemnitee**") from and against any and all Losses incurred by a Licensor Indemnitee resulting from any Action by a third party:

(a)   that any Intellectual Property Rights or other right of any Person, or any Law, is or will be infringed, misappropriated, or otherwise violated by any:

(i)   use or combination of the Software by or on behalf of Licensee or any of its Representatives with any hardware, software, system, network, service, or other matter whatsoever that is neither provided by Licensor nor authorized by Licensor in this Agreement and the Documentation; and

(ii)   information, materials, or technology directly or indirectly provided by Licensee or directed by Licensee to be installed, combined, integrated, or used with, as part of, or in connection with the Software or Documentation;

(b)   relating to facts that, if true, would constitute a breach by Licensee of any representation, warranty, covenant, or obligation under this Agreement;

(c)   relating to gross negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Licensee or any of its Representatives with respect to the Software or Documentation or otherwise in connection with this Agreement; or

(d)   relating to use of the Software or Documentation by or on behalf of Licensee or any of its Representatives that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Licensor's instructions.

12.3   Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 12.1 or Section 12.2. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitor's failure to perform any obligations under this Section 12.3 will not relieve the Indemnitor of its obligations under this Section 12.

12.4   Mitigation. If the Software, or any part of the Software, is, or in Licensor's opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Licensee's use of the Software is enjoined or threatened to be enjoined, Licensor may, at its option and sole cost and expense:

(a)   obtain the right for Licensee to continue to use the Software as contemplated by this Agreement;

(b)   modify or replace the Software, in whole or in part, to seek to make the Software non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Software under this Agreement; or

(c)   if, after Licensor's exercise of commercially reasonable efforts, none of the remedies set forth in the above Section 12.4(a) or Section 12.4(b) is reasonably available to Licensor, terminate this Agreement, in its entirety or with respect to the affected part or feature of the Software, effective immediately on written notice to Licensee, in which event:

(i)   Licensee shall cease all use of the Software and Documentation immediately on receipt of Licensee's notice; and

(ii)   provided that Licensee fully complies with its post-termination obligations set forth in Section 14.4, Licensor shall promptly refund to Licensee, on a pro rata basis, the share of any license fees prepaid by Licensee for the future portion of the Term that would have remained but for such termination.

12.5   Sole Remedy. THIS SECTION 12 SETS FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE OR DOCUMENTATION OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

13.   Limitations of Liability.

13.1   EXCLUSION OF DAMAGES. IN NO EVENT WILL LICENSOR, OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY LICENSED SOFTWARE OR OPEN SOURCE COMPONENTS OR OTHER THIRD-PARTY MATERIALS, (d) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT GOODS OR SERVICES, OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE

ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2   CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF LICENSOR ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

14.   Term and Termination.

14.1   Term. The initial term of this Agreement commences as of the Effective Date and continues in effect until twelve (12) months from such date unless terminated earlier pursuant to any of the Agreement's express provisions (the "**Initial Term**").

14.2   Renewal Term. This Agreement will automatically renew for an unlimited number of additional successive twelve (12) month terms unless earlier terminated pursuant to any of the Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively together with the Initial Term, the "**Term**").

14.3   Termination. This Agreement may be terminated at any time:

(a)   by Licensor, effective on written notice to Licensee, if Licensee fails to pay any amount when due under this Agreement, where such failure continues more than ten (10) days after Licensor's delivery of written notice thereof ("**Payment Failure**");

(b)   by Licensor, immediately on written notice to Licensee if any three (3) or more Payment Failures occur in any twelve (12) month period;

(c)   by either Party, effective on written notice to the other Party, if the other Party breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach;

(d)   by Licensor, effective immediately, if the Licensee: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for

the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

14.4   Effect of Termination or Expiration.

(a)   On the expiration or earlier termination of this Agreement:

(i)   If Licensee is using the Software under a perpetual license Proposal, Licensee may retain their Software license and continue using the software into perpetuity, with the understanding that Licensor makes no commitment to continue support of the Software into perpetuity. Licensor may at its discretion create a New Product and discontinue development and support of the Software. Until such time as Licensor discontinues to support the Software, support services may be available from Licensor, and are subject to the rates and terms & conditions in place at the time a request is made for support services;

(ii)   If Licensee is using the Software under a SaaS license Proposal, all rights, licenses and authorizations granted to licensee hereunder will immediately terminate and Licensee will (A) immediately cease all use of and other activities with respect to the Software and Documentation; (B) within thirty (30) days deliver to Licensor, or at Licensor's written request destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls, the Software, the Documentation and the Licensor's Confidential Information, including all documents, files, and tangible materials (and any partial and complete copies) containing, reflecting, incorporating, or based on any of the foregoing, whether or not modified or merged into other materials; and (C) certify to Licensor in a signed written instrument that it has complied with the requirements of this Section 14.4;

and

(b)   all amounts payable by Licensee to Licensor of any kind under this Agreement are immediately payable and due no later than ten (10) Business Days after the effective date of the expiration or termination of this Agreement.

(c)   Licensee will be subject to reinstatement fees if and when Licensee wishes to reinstate the software and/or related subscription services after expiration or termination of this Agreement. Reinstatement fees will be based on Licensor's policy in place at the time of reinstatement, but generally requires licensee to repurchase the software under a new Proposal. Licensor may change its reinstatement policy and related fees at its sole discretion without prior notice.

14.5   Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: this Section 14.5, Section 1, Section 7, Section 8, Section 9, Section 10, Section 12, Section 13, and Section 15. For further clarification, this Agreement does not

require Licensee to purchase a subscription from Licensor if the Software is used under a perpetual license Proposal. Therefore, if Licensee is using the Software under a perpetual license Proposal and discontinues the Software subscription, this Agreement shall apply in its entirety as long as the Licensee uses the Software.

15.   Miscellaneous.

    15.1   Further Assurances. On a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

    15.2   Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

    15.3   Public Announcements. Neither Party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other Party, which shall not be unreasonably delayed or withheld, provided, however, that Licensor may, without Licensee's consent, include Licensee's name and other indicia in its lists of Licensor's current or former customers of Licensor in promotional and marketing materials.

    15.4   Notices. Except as otherwise expressly set forth in this Agreement, any notice, request, consent, claim, demand, waiver, or other communication under this Agreement have legal effect only if in writing and addressed to a Party at the address first set forth above (or to such other address or such other person that such addressee Party may designate from time to time in accordance with this Section 15.4. Notices sent in accordance with this Section 15.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile, with confirmation of transmission, if sent during the addressee's normal business hours, and on the next Business Day, if sent after the addressee's normal business hours; and (d) on the fifth (5th) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

    15.5   Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice versa; and (e) words denoting any

gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices [attached] to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

15.6   Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

15.7   Entire Agreement. This Agreement, together with the Proposal and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the Proposal, related exhibits, schedules, attachments, and appendices and any other documents incorporated herein by reference. If any terms in the Proposal conflict with any terms or conditions in this Agreement, the terms in this Agreement shall govern, unless otherwise expressly stated in the Proposal.

15.8   Assignment. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensor's prior written consent. No assignment, delegation, or transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 15.8 is void. This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors and permitted assigns.

15.9   Export Regulation. The Software may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Licensee will not directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any country, jurisdiction or Person to which export, re-export, or release is prohibited by applicable Law. Licensee will comply with all applicable Laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the US.

15.10   Force Majeure.

(a)   No Breach or Default. In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the Effective Date, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown. Either Party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of sixty (60) days or more.

(b)   Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected Party will give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15.11   No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

15.12   Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by each Party. No waiver by any Party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.13   Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.14   Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania

without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania. For any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder, the Parties agree that the jurisdiction and venue shall lie only in the Court of Common Pleas of Lancaster County or the Federal District Court for the Eastern District of Pennsylvania and each of the Parties hereby irrevocably consents and submits to the jurisdiction of such courts. The Parties irrevocably waive any objection which the Parties may now or hereinafter have to the laying of the venue of any suit, action or proceeding brought in such court and any claim that such suit, action or proceeding brought in such a court has been brought in an inconvenient forum.

15.15   Waiver of Jury Trial. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

15.16   Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 2.4, Section 7, Section 10, or Section 12 of this Agreement would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including in a restraining order, an injunction, specific performance, and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

15.17   Attorneys' Fees. Licensee will reimburse Licensor for any and all costs incurred by Licensor to enforce this Agreement, including but not limited to attorneys' fees, court costs, expenses, and collection costs.

15.18   Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.