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Inflectra Corporation

Software Hosting and License Agreement

Revision 007

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Software Hosting and License Agreement

INFLECTRA SOFTWARE HOSTING AND END USER LICENSE AGREEMENT

THIS AGREEMENT IS BETWEEN _____ ("ORGANIZATION") A _____ COMPANY WITH PRINCIPAL OFFICES AT _____ AND INFLECTRA CORPORATION ("INFLECTRA"), A DELAWARE CORPORATION WITH PRINCIPAL OFFICES AT 8121 GEORGIA AVE, SUITE 504, SILVER SPRING, MD 20910. THIS AGREEMENT SUPERCEDES THE STANDARD INFLECTRA HOSTING AND LICENSE AGREEMENT LOCATED ON INFLECTRA'S WEBSITE AND ITS SUCCESSORS.

IMPORTANT: THIS SOFTWARE HOSTING AND END USER LICENSE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN ORGANIZATION AND INFLECTRA. READ IT CAREFULLY BEFORE PURCHASING A SOFTWARE SUBSCRIPTION AND USING THE SOFTWARE. IT PROVIDES A LICENSE TO USE THE HOSTED VERSION OF THE SOFTWARE AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS.

THIS AGREEMENT SHALL APPLY ONLY TO THE SOFTWARE AND HOSTING SERVICES SUPPLIED BY INFLECTRA HERewith REGARDLESS OF WHETHER OTHER SOFTWARE OR SERVICES ARE REFERRED TO OR DESCRIBED HEREIN.

1. Definitions

- (i) "Inflectra" means Inflectra Corporation and its licensors or affiliates, if any.
- (b) "Software" means only the Inflectra software program(s) and third party software programs, in each case, supplied by Inflectra herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation.
- (c) "Software Edition" means the specific version of the Software that you have purchased including the specified number of concurrent user licenses.
- (d) "Hosting" means the service provided by Inflectra to install and host the Software on a shared Microsoft Windows® Web Server and Microsoft SQL Server® Database Server that is publicly accessible to you over the Internet.
- (e) "Subscription" means the combination of Software and Hosting provided by Inflectra to you during the specified Subscription Period.
- (f) "Subscription Period" means the period(s) during which a specified number of Users are licensed to use the Subscription pursuant to the purchased Software Edition.
- (g) "Organization" means the legal entity purchasing the Subscription. In the case of local, state, territory or federal governments, organization will be limited to the specific department or statutory agency of Government purchasing the license.
- (h) "User(s)" means employees, representatives, consultants, contractors, agents or customers of Organization who are authorized to use the Subscription and have been supplied user identifications and passwords by Organization (or by Inflectra at Organization's request).
- (i) "User Data" means all text, pictures, sound, graphics, video and other data provided by users of the Software.
- (j) "Trial Subscription" means a time-limited evaluation Subscription provided at no cost to Organization for the purposes of evaluating the functionality of the Software.
- (k) "Commercial Subscription" means a Subscription that is not a "Trial Subscription"

2. Hosting.

Hosting Services: Inflectra will provide the following Software hosting services as part of a Commercial Subscription. Such services will be performed in a professional, workmanlike manner with a high grade of services, so that the Software is accessible to third parties as can be reasonably be required by Organization.

(a) Data Backup: Inflectra will maintain a daily copy of the User Data stored in the Software as part of the Subscription. In addition, Inflectra takes hourly snapshots of the live system and replicates them to the designated disaster recovery location for the subscription.

(b) Data Downloads. Organization may request a copy of any and all User Data at any time. Inflectra will make requested User Data available on its secure web site for Organization to download. The charge to Organization, payable to Inflectra, will be \$250 per hour. This fee is subject to change with one-month advance written notice from Inflectra to Organization.

(c) Standards/Service Level Guarantees. Inflectra's hosting standards will conform to the standards, service level guarantees and specifications set forth in Exhibit A.

(d) Security. Inflectra will exercise industry-standard measure to prevent unauthorized access to the backup server sites, restricted areas of the Software and any databases or other sensitive material generated from or used in conjunction with the Software; and Inflectra will notify Organization of any known security breaches or holes.

(e) Support. Inflectra shall maintain an organization and be prepared with suitably qualified and competent personnel during its normal business hours to provide knowledgeable and timely support service in accordance with this Agreement. Under the terms of this Agreement, Inflectra will provide to Organization the following support services:

i. Telephone Support: Inflectra will provide telephone support to Organization during Normal Business Hours. Normal Business Hours are between 9 a.m. to 5 p.m. (EST/EDT), Monday through Friday, excluding U.S. public holidays.

ii. Telephone support is provided by Technical Support Engineers (TSE). It is the responsibility of the TSE to coordinate the resolution of problems, including the verification of any reported error, communicating with Organization for additional information, telephone or email resolution or workaround, as applicable, and for supplying the error correction and/or update as necessary.

iii. Email Support: Organization may log requests for support via email by directing its query to an email account or website provided by Inflectra.

iv. Turnaround Time: Inflectra will make reasonable efforts for a TSE to respond to emails and phone messages within one (1) Business Day.

In the case of a Trial Subscription, Inflectra will NOT provide services (a), (b), (c) and (d) from the list defined in Section 2 above.

3. License Grants & Restrictions

(a) Inflectra hereby grants Organization a non-exclusive, non-transferable right to use the Subscription, subject to the terms and conditions of this Agreement. All rights not expressly granted to Organization are reserved by Inflectra and its licensors.

(b) During the period that Inflectra provides web hosting services pursuant to Section 3, Organization hereby grants to Inflectra a non-exclusive, non-sublicenseable, royalty-free, worldwide license to store, reproduce, distribute and display and the User Data only on or in conjunction with the Subscription.

Organization grants no rights other than explicitly granted herein, and Inflectra will not exceed the scope of its license.

(c) Organization may use the Subscription only for Organization's business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third-party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Subscription or the data contained therein; or (v) attempt to gain unauthorized access to the Hosting service or its related systems or networks.

4. Your Responsibilities

Organization is responsible for all activity occurring on Inflectra's servers and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with its use of the Subscription, including those related to data privacy, international communications and the transmission of technical or personal data. Inflectra is responsible for providing the Hosting service and shall abide by all local, state, national and foreign laws, treaties and regulations applicable to it in connection with the Subscription, including those related to data privacy, international communications and the transmission of technical or personal data. Each party shall: (i) notify the other immediately of any unauthorized use of any password or account or any other known or suspected breach of security; and (ii) report to the other party immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of User Data that is known or suspected by either party. Organization shall not impersonate another Inflectra customer, or provide false identity information to gain access to or use the Subscription.

5. Account Information and Data

Inflectra does not own or license any data, information or material that Organization submits to the Software in the course of using the Subscription ("User Data"). Organization, not Inflectra, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all User Data, and Inflectra shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any User Data, except as specifically required by this Agreement. In the event this Agreement is terminated (other than by reason of Organization's breach), Inflectra will make available to Organization a file of the User Data within 30 days of termination if Organization so requests at the time of termination.

6. Intellectual Property Ownership

(a) Inflectra Software. The foregoing grants of rights give Organization limited license to use the Software. Except as expressly provided in this Agreement, Inflectra and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software (as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications you may develop), and all copies thereof. All rights not specifically granted in this AGREEMENT, including Federal and International Copyrights, are reserved by Inflectra and its suppliers.

(b) Ownership of User Data. As between Inflectra and Organization, any data given to Inflectra by Organization under this Agreement or otherwise ("Data"), and all User Data, will at all times remain the property of Organization or its licensor. Inflectra will have no rights in such Data or User Data, other than the limited right to use such data for the purposes expressly set forth in this Agreement.

7. Charges and Payment of Fees

Organization shall pay all fees or charges to Organization's account in accordance with the fees, charges, and billing terms contained in any Order Form executed by Inflectra. Payments may be made annually, quarterly, monthly, or as otherwise mutually agreed upon in writing. Organization is responsible for paying for all the user licenses in the Software Edition for the entire Subscription Period, whether or not such user licenses are actively used. Inflectra reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to Organization, which notice may be provided by e-mail. All pricing terms are confidential, and Organization agrees not to disclose them to any third party unless Inflectra has made them publicly available beforehand.

8. Billing and Renewal

Inflectra charges and collects in advance for use of the Subscription. Inflectra will automatically renew and issue an invoice to Organization monthly or as otherwise set forth in any Order Form Organization has executed. Fees for other services will be charged on an as-quoted basis. Inflectra's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Organization shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) or foreign taxes based solely on Inflectra's or its personnel's income.

Organization agrees to provide Inflectra with complete and accurate billing and contact information. This information includes Organization's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. Organization agrees to update this information within 30 days of any change to it. If the contact information Organization has provided is false or fraudulent, Inflectra reserves the right to terminate Organization's access to the Subscription in addition to any other legal remedies.

If Organization believes its bill is incorrect, Organization must contact Inflectra in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

9. Non-Payment and Suspension

In addition to any other rights granted to Inflectra herein, Inflectra reserves the right to suspend or terminate this Agreement and Organization's access to the Subscription if Organization fails to pay any invoice when due and Inflectra has provided Organization with written notice of such failure and Organization has failed to make such payment within an additional thirty (30) days. Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Organization will continue to be charged for Subscription during any period of suspension. If Organization or Inflectra initiates termination of this Agreement, Organization will be obligated to pay the balance due on Organization's account prior to the date of termination, computed in accordance with the Charges and Payment of Fees section above. Organization agrees that Inflectra may bill Organization for such unpaid fees.

Inflectra reserves the right to impose a reconnection fee in the event Organization is suspended and thereafter requests access to the Subscription. Organization agrees and acknowledges that Inflectra has no obligation to retain User Data 30 days after any termination of this Agreement.

10. Term and Termination

10.1. Monthly Subscriptions

For monthly subscriptions, this Agreement commences on the date Users first access the Subscription (the "Effective Date"). The Initial Term will be from the Effective Date for the period of one (1) calendar

month. Unless either party provides written notice of non-renewal to the other party ten (10) days prior to expiration of the Initial Term, upon the expiration of the Initial Term any Order Form in effect under this Agreement will automatically renew for successive renewal terms of one calendar month.

10.2. Annual Subscriptions

For annual subscriptions, this Agreement commences on the date Users first access the Subscription (the "Effective Date"). The Initial Term will be from the Effective Date for the period of one (1) calendar year. Unless either party provides written notice of non-renewal to the other party ten (10) days prior to expiration of the Initial Term, upon the expiration of the Initial Term any Order Form in effect under this Agreement will automatically renew for successive renewal terms of one calendar year.

10.3. Subscription Rates

The rate specified in each Order Form shall continue to be the rate during any renewal term unless Inflectra provides written notice to Organization of any price increase at least ten (10) days prior to the end of the current term.

10.4. Termination

Either party may terminate this Agreement due to a material breach of this Agreement by the other party, provided the party seeking termination first provides the breaching party written notice of the breach and thirty (30) days in which to cure the breach. After the Initial Term, either party also may terminate this Agreement for convenience, by notifying the other party in writing at least ten (10) days prior to the end of the current term. Termination (other than by reason of breach) does not affect any prepaid fees or charges provided by Organization to Inflectra in accordance with section 7. Specifically, Inflectra is not required to refund the fees paid by Organization for the current subscription period.

10.5. Data Retention

In the event this Agreement is terminated (other than by reason of Organization's breach), Inflectra will make available to Organization a file of the Data within thirty (30) days of termination if Organization so requests at the time of termination and has paid Inflectra, in full, for all services to that point. Organization agrees and acknowledges that Inflectra has no obligation to retain the User Data, and may delete such User Data, more than sixty (60) days after any termination or expiration of this Agreement.

11. Termination for Cause

Any breach of Organization's payment obligations or unauthorized use of the Inflectra Software or Subscription will be deemed a material breach of this Agreement. Inflectra, in its sole discretion, may terminate Organization's passwords, accounts and/or access to the Subscription after providing the notice and right to cure provided in Section 10, if Organization breaches or otherwise fails to comply with this Agreement.

12. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Inflectra represents and warrants that it will provide the Subscription in a manner consistent with commercially reasonable industry standards reasonably applicable to the provision thereof. Organization represents and warrants that it has not falsely identified itself nor provided any false information to gain access to the Subscription and that Organization's billing information is correct.

13. LIMITED WARRANTY AND DISCLAIMER

(a) INFLECTRA AND ITS SUPPLIERS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SUBSCRIPTION OR ANY DATA.

(b) INFLECTRA AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE USE OF THE SUBSCRIPTION WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA,

(d) INFLECTRA PROVIDES NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, FOR TRIAL SUBSCRIPTIONS. TRIAL SUBSCRIPTIONS ARE EXPLICITLY PROVIDED "AS IS".

(e) EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY WITH RESPECT TO THE SUBSCRIPTION OTHER THAN TRIAL SUBSCRIPTIONS, INFLECTRA AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALSO, THERE IS NO WARRANTY OF NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. INFLECTRA DOES NOT WARRANT THAT THE SUBSCRIPTION WILL PERFORM ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. THE SUBSCRIPTION IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. INFLECTRA SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

(e) INFLECTRA AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE SUBSCRIPTION OR THE SERVER(S) THAT MAKE THE SUBSCRIPTION AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

(f) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY INFLECTRA, ITS DEALERS, DISTRIBUTORS, AFFILIATES, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

(g) SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

14. Exclusive Remedy

Your exclusive remedy under the preceding is to terminate your Subscription in accordance with the terms defined in section 10. THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO YOU FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE AND RELATED DOCUMENTATION.

15. Internet Delays

INFLECTRA'S SUBSCRIPTIONS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. INFLECTRA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE

RESULTING FROM SUCH PROBLEMS, EXCEPT TO THE EXTENT CAUSED BY INFLECTRA'S GROSS NEGLIGENCE OR WILFULL MISCONDUCT.

16. LIMITATION OF LIABILITY

(a) NEITHER INFLECTRA NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF INFLECTRA OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(b) INFLECTRA'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE GREATER OF \$500 OR FOR THREE (3) MONTHS FEES FOR THE SUBSCRIPTION.

(c) SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

(d) THE FOREGOING LIMITATIONS ON LIABILITY ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS AGREEMENT.

17. Basis of Bargain

The Limited Warranty and Disclaimer, Exclusive Remedies and Limitation of Liability set forth above are fundamental elements of the basis of the agreement between Inflectra and you. Inflectra would not be able to provide the Software on an economic basis without such limitations. Such Limited Warranty and Disclaimer, Exclusive Remedies and Limitation of Liability inure to the benefit of Inflectra's licensors.

18. U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND

This Subscription and the documentation are provided with "RESTRICTED RIGHTS" applicable to private and public licenses alike. Without limiting the foregoing, use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in this AGREEMENT and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (c)(1)(ii)(OCT 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14, as applicable. Manufacturer: Inflectra Corporation, 8121 Georgia Avenue, Suite 504, Silver Spring, MD 20910.

19. (Outside of the USA) Consumer End Users Only

The limitations or exclusions of warranties and liability contained in this AGREEMENT do not affect or prejudice the statutory rights of a consumer, i.e., a person acquiring goods otherwise than in the course of a business.

The limitations or exclusions of warranties, remedies or liability contained in this AGREEMENT shall apply to you only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where you are located.

20. Third Party Software

The Software may contain third party software which requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms and conditions are located at <http://www.inflectra.com/Company/Legal-Notices.aspx> and are made a part of and incorporated by reference into this AGREEMENT. By accepting this AGREEMENT, you are also accepting the additional terms and conditions, if any, set forth therein.

21. Notice

Inflectra may give notice by means of a general notice on the Software, electronic mail to Organization's e-mail address on record in Inflectra's account information, or by written communication sent by first class mail or pre-paid post to Organization's address on record in Inflectra's account information. Notice shall be deemed to have been given upon the expiration of two business days after mailing or posting (if sent by first class mail or pre-paid post), one business day after mailing via an overnight delivery service, upon receipt of facsimile confirmation by sender, or 12 hours after sending by email.

22. Confidential Information

Inflectra may have access to and special knowledge of Organization's business affairs and related information and User Data disclosed to it or known to it as a consequence of providing the Subscription to Organization, which is considered to be trade secret, proprietary, confidential and/or sensitive ("Confidential Information"). Inflectra agrees not to use Confidential Information except for Organization's benefit in the course of performing services for Organization, and not to disclose Confidential Information to any third party without Organization's prior written consent, except as required by law. Upon expiration or termination of this Agreement Inflectra will return or destroy (at Organization's request) any of Organization's Confidential Information.

23. (European Union) General Data Protection Regulation

The General Data Protection Regulation (GDPR) was created to align the data privacy laws across all EU countries. The GDPR came into effect in May 25th, 2018 and replaces the Data Protection Directive 95/46/EC. A major update within the GDPR is that the processing of any EU citizens' information is now protected, regardless of whether the information processing is done within the EU or not, and regardless of where the data controller is located.

If Organization captures, stores, or processes EU citizen's data as part of the User Data being hosted by Inflectra during the provision of the Subscription, Organization hereby consents to be bound by the additional Terms and Conditions of the GDPR outlined in Exhibit B of this agreement as well as the Inflectra Data Processing Agreement (DPA), including GDPR Standard Contractual Clauses (SCC).

The Agreement fulfils the requirements for a valid data processing agreement. Inflectra may amend the Agreement to the extent necessary due to any mandatory new requirements following from the EU Regulation 2016/679 (GDPR) and pursuant to its Irish implementation.

24. General

This AGREEMENT shall be governed by the internal laws of the State of Maryland, without giving effect to principles of conflict of laws. You hereby consent to the exclusive jurisdiction and venue of the state courts sitting in the Sixth (6) Judicial Circuit, Maryland or the federal courts in the Federal Judicial District of Maryland to resolve any disputes arising under this AGREEMENT. In each case this AGREEMENT shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

This AGREEMENT contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. You agree that any varying or additional terms contained in any purchase order or other written notification or document issued by you in relation to the Subscription licensed hereunder shall be of no effect. The failure or delay of Inflectra to exercise any of its rights under this AGREEMENT or upon any breach of this AGREEMENT shall not be deemed a waiver of those rights or of the breach.

Any dispute resolution proceedings, whether in arbitration or court, will be conducted only on an individual basis and not in a class or representative action or as a named or unnamed member in a class, consolidated, representative or private attorney general legal action, unless both you and Inflectra specifically agree to do so in writing following initiation of the arbitration. This provision does not preclude your participation as a member in a class action filed on or before August 20, 2011.

No Inflectra dealer, agent, affiliate or employee is authorized to make any amendment to this AGREEMENT.

If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect.

All questions concerning this AGREEMENT shall be directed to: Inflectra Corporation, 8121 Georgia Avenue, Suite 504, Silver Spring, MD 20910, Attention: General Counsel.

Inflectra, SpiraTest, SpiraPlan, SpiraTeam and other trademarks contained in the Software are trademarks or registered trademarks of Inflectra Corporation in the United States and/or other countries. Third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software. This AGREEMENT does not authorize you to use Inflectra's or its licensors' names or any of their respective trademarks.

ACCEPTED AND AGREED TO:

Inflectra Corporation

By:

Inflectra Signature Date

Printed Name

Title & Organization

ACCEPTED AND AGREED TO:

By:

CUSTOMER Signature Date

Printed Name

Title & Organization

EXHIBIT A

1. Subscription Availability

If the availability of Subscription within a given month is less than 95%, Inflectra will issue a credit to Organization in accordance with the following schedule, with the credit being calculated on the basis of the monthly service charge for the affected services:

- | | | | |
|-----|-----------------------------|---|------|
| (a) | 95% - 100% availability | = | 0% |
| (b) | 90% - 94.9% availability | = | 20% |
| (c) | 80% - 89.9% availability | = | 50% |
| (d) | 79.9% or below availability | = | 100% |

2. Organization will not receive any credits under this Agreement in connection with any failure or deficiency of Subscription availability caused by or associated with:

- (a) circumstances beyond Inflectra's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, ecommerce software, payment getaways, chat, supplies, or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of this AGREEMENT;
- (b) Failure of access circuits to the Inflectra's Network, unless such failure is caused solely by Inflectra;
- (c) Scheduled maintenance and emergency maintenance and upgrades;
- (d) Domain Name Server ("DNS") issues outside the direct control of Inflectra;
- (e) Issues with FTP, POP, or SMTP Inflectra access;
- (f) False Agreement breaches reported as a result of outages or errors of any Inflectra measurement system;
- (g) Organization's acts or omissions (or acts or omissions of others engaged or authorized by Organization, negligence, willful misconduct, or use of the Subscription in breach of Inflectra Terms and Conditions and Acceptable Use Policy;
- (h) E-mail or webmail delivery and transmission;
- (i) DNS propagation;
- (j) Outages elsewhere on the Internet that hinder access to Organization's account. Inflectra is not responsible for browser or DNS caching that may make Organization's site appear inaccessible when others can still access it. Inflectra will guarantee only those areas considered under the control of Inflectra. Inflectra server links to the Internet, Inflectra's routers, and Inflectra's servers.

EXHIBIT B – EU GDPR Addendum

Definitions

- (i) “Data Controller”. In accordance with the EU General Data Protection Regulation (GDPR), Organization acts as the data controller for any personal data stored or processed within the Subscription. As data controller, Organization determines the purposes and means of processing personal data.
- (ii) “Data Processor”. In accordance with the EU GDPR, Inflectra acts as the data processor, and processes data on behalf of the data controller.
- (iii) “Supervisory Authority”. Each EU Member State shall provide for one or more independent public authorities (called the Supervisory Authority) to be responsible for monitoring the application of GDPR, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union.

Data Controller Responsibilities

Data controllers are responsible for implementing appropriate technical and organizational measures to ensure and demonstrate that any data processing is performed in compliance with the GDPR. Controllers’ obligations relate to principles such as lawfulness, fairness and transparency, purpose limitation, data minimization, and accuracy, as well as fulfilling data subjects’ rights with respect to their data.

Consequently, Organization, in keeping with its role as data controller (as defined by the GDPR) hereby agrees to the following responsibilities:

1. Lawful Basis for Processing

Data can only be processed if there is at least one lawful basis to do so. The lawful bases for processing data are:

- the data subject has given consent to the processing of his or her personal data for one or more specific purposes.
- processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.
- processing is necessary for compliance with a legal obligation to which the controller is subject.
- processing is necessary in order to protect the vital interests of the data subject or of another natural person.
- processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
- processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

2. Responsibility and accountability

It is the responsibility and liability of the data controller to implement effective measures and be able to demonstrate the compliance of processing activities even if the processing is carried out by a data processor on behalf of the controller.

Accordingly, Organization hereby indemnifies Inflectra for any breaches in Organization's responsibilities as data controller, and will hold Inflectra harmless for any actions taken by Organization's Supervisory Authority against Organization for such breaches.

3. Consent

Where consent is used as the lawful basis for processing, consent must be explicit for data collected and the purposes data are used for (Article 7; defined in Article 4). Consent for children[16] must be given by the child's parent or custodian, and verifiable (Article 8). Data controllers must be able to prove "consent" (opt-in) and consent may be withdrawn.

4. Right of access

The Right of Access (Article 15) is a data subject right.[20] This gives citizens the right to get access to their personal data and information about how these personal data are being processed. A Data Controller has to provide, upon request, an overview of the categories of data that are being processed (Article 15(1)(b)) as well as a copy of the actual data (Article 15(3)). Furthermore, the Data Controller has to inform the data subject on details about the processing such as; what the purposes are of the processing (Article 15(1)(a)), with whom the data are shared (Article 15(1)(c)) and how it acquired the data (Article 15(1)(g)).

5. Right to erasure

A right to be forgotten was replaced by a more limited right to erasure in the version of the GDPR adopted by the European Parliament in March 2014.[21][22] Article 17 provides that the data subject has the right to request erasure of personal data related to them on any one of a number of grounds including non-compliance with article 6.1 (lawfulness) that includes a case (f) where the legitimate interests of the controller is overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data.

Organization hereby agrees to appropriately delete, obfuscate, or otherwise erase personal data from a subject where the data subject has legitimate grounds (as defined in the GDPR), using the tools provided within the Subscription by Inflectra.

6. Data portability

A person shall be able to transfer their personal data from one electronic processing system to and into another, without being prevented from doing so by the data controller. Data that has been sufficiently anonymized is excluded, but data that have only been de-identified but remains possible to link to the individual in question, such as by him or her providing the relevant identifier, is not.

The Subscription provided by Inflectra to Organization, includes built-in tools for exporting personal data in different industry standard formats. These tools enable Organization to meet its obligations with respect to data portability within the GDPR.

7. Data protection by Design and by Default

Data protection by Design and by Default (Article 25) requires that data protection is designed into the development of business processes for products and services. This requires that privacy settings must be set at a high level by default and that technical and procedural measures should be taken care by the controller in order to make sure that the processing, throughout the whole processing lifecycle, complies with the regulation. Controllers should also implement mechanisms to ensure that personal data are only processed when necessary for each specific purpose.

Inflectra has designed the security of its infrastructure used for providing the Subscription in layers that build upon one another, from the physical security of data centers, to the security protections of hardware and software, to the processes used to support operational security. This layered protection creates a strong security foundation for the subscription

In addition, Inflectra's maintains multiple different, isolated regions, allowing Organization to choose the location where its data will be hosted. Where Organization's choice of location results in international data transfers, Organization agrees to be bound by the Inflectra Data Processing Agreement (DPA), including GDPR Standard Contractual Clauses (SCC) facilitating such transfers.

8. Records of processing activities

Records of processing activities must be maintained, that include purposes of the processing, categories involved and envisaged time limits. These records must be made available to the supervisory authority on request.[26] (article 30) to the data controller.

Inflectra provides to Organization the ability to maintain their data in their Subscription in a low-cost three (3) user "archive edition" to maintain their data retention responsibilities. In addition, Inflectra will make available to Organization a copy of their entire database at the termination of Subscription so that they can maintain their required records.

9. Data breaches

Under the GDPR, the Data Controller will be under a legal obligation to notify the Supervisory Authority without undue delay. The reporting of a data breach is not subject to any de minimis standard and must be reported to the Supervisory Authority within 72 hours after having become aware of the data breach (Article 33). Individuals have to be notified if adverse impact is determined (Article 34). In addition, the data processor will have to notify the controller without undue delay after becoming aware of a personal data breach (Article 33).

10. Data Protection Officer

Where the processing is carried out by a public authority, except for courts or independent judicial authorities when acting in their judicial capacity, or where, in the private sector, processing is carried out by a controller whose core activities consist of processing operations that require regular and systematic monitoring of the data subjects, a person with expert knowledge of data protection law and practices should assist the data controller or data processor to monitor internal compliance with this Regulation.

Organization warrants to Inflectra, that if it falls within one of the defined categories requiring an independent Data Protection Officer (DPO), Organization has a suitability qualified DPO available to ensure compliance with this provision of the GDPR.

Data Processor Responsibilities

As described in the GDPR, the Data Processor processes data on behalf of the data controller. Inflectra acts as Data Processor for Organization, and thereby processes personal data on behalf of the Data Controller when the Data Controller is using Inflectra Cloud Services.

Inflectra will only process personal data on behalf of the Organization during the term of this Agreement, or if there exists another legal basis for processing. The personal data processed will be related to the users accessing the Inflectra Cloud Services and, if applicable, such other categories of persons as described below.

Consequently, Inflectra, in keeping with its role as Data Processor (as defined by the GDPR) hereby agrees to the following responsibilities:

1. Lawful Basis for Processing

Inflectra shall process personal data only in accordance with this Agreement or other documented instructions from Organization. Inflectra may also be required to perform certain processing by applicable law – in such a case, Inflectra shall inform the Organization of such legal requirement before processing start, unless that law prohibits such information on important grounds of public interest.

2. Responsibility and accountability

All Inflectra employees and subcontractors are required to sign a confidentiality agreement and complete mandatory confidentiality and privacy trainings, as well as our Code of Conduct training. Inflectra's Code of Conduct specifically addresses responsibilities and expected behavior with respect to the protection of information.

3. Consent

Inflectra Cloud Services provides the administrators with an option to display and informative message on the login pages to clearly describe how consent needs to be obtained prior to entering the data into the platform, simplifying the process of notifying users of their obligations.

4. Right of access

The personal data required by the Inflectra Cloud Services consists of:

- User Name
- User Email
- User Title
- User Login Identifier

The personal data transferred will be subject to the following basic processing activities:

- The personal information is used for the purposes of authentication and authorization of users in the system
- The personal information is used for audit tracking and history tracking of changes made to data in the system
- The personal information is used for the basis of sending email notifications to parties using the system
- The personal information is used for the tracking and assignment of work items in the system
- Daily backups of the personal information are made and transferred to backup storage devices

Administrators can export customer data, via the functionality of the Inflectra Cloud Services platform, at any time during the term of the agreement.

5. Right to erasure

Administrators using the Inflectra Cloud Services platform can delete or obfuscate customer data, via the functionality of the appropriate product, at any time using the built-in tools. Inflectra support personnel are available to assist customers with questions about deleting, purging and obfuscating data in the system.

In addition, upon termination of service, when Inflectra receives a confirmation of subscription termination, Inflectra will delete the relevant customer data from all of its systems within a maximum period of sixty (60) days unless bespoke retention obligations apply to the contract with the customer.

6. Data portability

The Subscription provided by Inflectra to Organization, includes built-in tools for exporting personal data in different industry standard formats. These tools enable Organization to meet its obligations with respect to data portability within the GDPR.

7. Data protection by Design and by Default

Inflectra has designed the security of its infrastructure used for providing the Subscription in layers that build upon one another, from the physical security of data centers, to the security protections of hardware and software, to the processes used to support operational security. This layered protection creates a strong security foundation for the subscription

In addition, our products use customizable role-based authorization, so that administrators acting as data controllers, can manage the access to information and data with fine-grained controls, allowing information to only be available to those with a need to access it, for the documented lawful basis.

In addition, Inflectra's maintains multiple different, isolated regions, allowing Organization to choose the location where its data will be hosted. Where Organization's choice of location results in international data transfers, Organization agrees to be bound by the Inflectra Data Processing Agreement (DPA), including GDPR Standard Contractual Clauses (SCC) facilitating such transfers.

8. Records of processing activities

The Inflectra Cloud Services platform provides a complete audit history of data in the system. The platform comes with built-in tools to report on the history and track who entered specific data elements into the system and which users changed records. With the option to activate electronic signatures as a standard part of our suite, administrators can ensure that only lawful processing and storage occurs.

In addition, Inflectra provides to Organization the ability to maintain their data in their Subscription in a low-cost three (3) user "archive edition" to maintain their data retention responsibilities. In addition, Inflectra will make available to Organization a copy of their entire database at the termination of Subscription so that they can maintain their required records.

9. Data breaches

In case of personal data breach, or security Incidents with potential impact on personal data, Inflectra shall notify Organization promptly after becoming aware of the breach or the incident.