eQ Technologic

**IMPORTANT NOTICE
TO RECIPIENT OF
eQ Technologic, Inc. SOFTWARE:**

The downloading, installation, deployment, operation and use of the Software you are about to Install is expressly subject to eQ Technologic, Inc.'s General Terms and Conditions, attached hereto as Schedule A and to its Licensed Software Agreement Terms and Conditions, attached hereto as Schedule B, in accordance with a valid, <u>written and</u> <u>accepted license agreement</u> between you (your company) and eQ Technologic, Inc. or one of its authorized sub-licensing agents, such as Siemens Industry Software, Inc.

In cases where the license rights are granted by one of eQ Technologic, Inc.'s authorized sub-licensing agents, the term "Software" in the attached Schedules A and B shall refer to all the eQ Technologic, Inc. software to which this Notice applies, even in the absence of a License Software Designation Agreement ("LSDA"), the same as if there were an accepted LSDA naming each and every such software.   Additionally, the term "Customer" shall refer to the licensed user of the Software.

In the event you do not have such a separate written license agreement, you have no permission to download, install, deploy, operate or use this Software and the attached Software must be permanently deleted or returned to eQ Technologic, Inc.

By downloading, deploying and installing this software, you hereby ratify your acceptance of the attached terms and conditions and confirm to be legally bound by its terms.

<u>attachments:</u>
Schedule A - eQ Technologic, Inc.'s General Terms and Conditions, v 3.7, Jan, 2018
Schedule B - eQ Technologic, Inc.'s Licensed Software Agreement Terms and Conditions, v 3.7 Jan 2018

1. Applicable Charges. Customer will pay eQ's then current, standard charges, or such other charges as are mutually agreed upon by the parties in writing set out in the applicable LSDA or SOW, for the licenses or services provided under and pursuant to this Agreement. In addition, Customer will pay: (i) reasonable expenses incurred by eQ in connection with any Customer rescheduling or termination of an order prior to provisioning of services thereof; (ii) eQ's then current, standard time and material charges for services requested by Customer and agreed to by eQ, beyond those covered by an SOW or LSDA; (iii) reasonable travel and travel-related expenses incurred by eQ in connection with eQ's performance of training and services beyond those covered by an SOW or LSDA; and (iv) all taxes (including sales taxes, as applicable) and other governmental fees or assessments, however designated, related to the provision of services or the licensing of software under this Agreement paid or payable by eQ under this Agreement, exclusive of franchise taxes and taxes based on eQ's net income

2. Billing and Payment Terms. All monies due hereunder will be invoiced and payable as provided in the SOW and /or LSDA and if not so provided, invoiced upon completion or delivery. Unless otherwise specifically agreed in writing, eQ will invoice Customer monthly in arrears for all other agreed charges including and travel, lodging expenses. Customer will pay each invoice within 30 days after the date of the eQ invoice. Any amount not paid when due will bear interest until paid at a rate of interest equal to the lesser of 2% per month or the maximum rate of interest allowed by applicable law. In addition, Customer will reimburse eQ for all reasonable legal fees and other costs and expenses incurred in collecting past due amounts.

3. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, eQ AND ITS THIRD PARTY SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE EVEN IF SUCH PURPOSE IS KNOWN WITH RESPECT TO THE eQ SOFTWARE, RELATED DOCUMENTATION OR SERVICES PROVIDED UNDER AND PURSUANT TO THIS AGREEMENT.

4. Limitation of Liability. eQ's entire liability for all claims or damages arising out of or related to this Agreement, regardless of the form or cause of action, whether in contract, equity, negligence, intended conduct, tort or otherwise, will be limited to and will not exceed, in the aggregate, the amount paid to eQ under the order incorporating this Agreement for the specific item that caused the damage or that is the subject matter of, or is directly related to, the cause of action. **In no event will the measure of damages payable by eQ include, nor will eQ be liable for, any amounts for loss of income, profit or savings or any other indirect, incidental, consequential, exemplary, punitive or special damages** of any party, including third parties, even if eQ has been advised of the possibility of such damages in advance, and all such liability is **expressly disclaimed**. No cause of action which arose out of an event or events which occurred more than two (2) years prior to the filing of a suit alleging a claim or cause of action may be asserted by either party against the other.

Customer hereby acknowledges that eQ would not have entered into this Agreement without the inclusion of the above Sections 3 (Disclaimer), the within Section 4 (Limitation of Liability), 11 (e) (Severability of Actions) and other disclaimers and limitations set forth in this Agreement and Schedules attached, and eQ and Customer acknowledge and agree that these provisions, limitations and exclusions represent the parties' agreement as to the allocation of risk between the parties. The financial and other terms of the Agreement and those of in any quote or order incorporating this Agreement reflect this allocation of risk.

5. Business Risks Not Assumed. Each of the parties acknowledge that by entering into and performing its obligations under this Agreement, eQ will not assume and should not be exposed to the business and operational risks associated with Customer's business

6. Termination. If either party materially defaults in the performance of any of its duties or obligations under this Agreement or any SOW or LSDA, other than the payment of monies due, and fails to proceed within 30 days after written notice thereof to commence curing the default and thereafter to proceed with reasonable diligence to substantially cure the default, the other party may, by giving written notice thereof, terminate this Agreement and/or the relevant SOW and/or LSDA effective immediately.
    If Customer fails to timely pay any monies due to eQ pursuant to this Agreement and does not cure such default within 10 days after written notice thereof, eQ may, by giving written notice thereof to Customer, terminate this Agreement and any outstanding LSDA and/or SOW (order) incorporating the Agreement in their entirety effective immediately and invoice Customer for all work performed on any outstanding LSDA and /or SOW (order) based on a percentage of completion and invoice all costs and expenses, including all internal costs and expenses incurred as a result of such termination.
    Except as may be prohibited or to the extent it may be limited by United States bankruptcy laws, in the event of either party's insolvency or inability to pay

debts as they become due, voluntary or involuntary bankruptcy proceedings by or against a party hereto, or appointment of a receiver or assignee for the benefit of creditors, the other party may terminate this Agreement and any outstanding LSDA and SOW (order) incorporating the Agreement by written notice.

7. Notices. All notices required by or relating to this Agreement must be in writing, may be sent in any commercially reasonable manner that provides proof of delivery (or refusal to accept delivery) and will be considered to have been given when received, when delivery is refused or when the sender can otherwise demonstrate. All notices hereunder shall be sent to eQ Technologic Inc. to the attention of Contracts, 500 Office Center Drive, Suite 400, Fort Washington, PA 19034, USA; to Customer at the address set forth on the first page of this Agreement; or to such other address as either party may specify by written notice to the other.

8. Export. This Agreement is subject to all United States government laws, regulations, orders or other restrictions regarding export from the United States of services, commodities, software, technology or derivatives thereof, as such laws, regulations, orders, or other restrictions may be enacted, amended or modified from time to time. Notwithstanding anything to the contrary in this Agreement, Customer will not directly or indirectly, separately or as part of a system, export or re-export any eQ services, commodity, software, technology or derivatives thereof or permit the shipment of same without: (i) the express written consent of eQ, which consent may be withheld at eQ's sole discretion and (ii) obtaining, at Customer's sole expense, any required prior authorization from the United States Department of Commerce or other applicable authority as may be required by law.

Customer acknowledges and agrees that, unless a validated export license is obtained from the United States Department of Commerce or other applicable authority where required, Customer will not use the eQ services, commodities, software, technology or derivatives thereof in the design, development, production, stockpiling or use of missiles, or chemical or biological weapons nor will Customer use the eQ services, commodities, software, technology or derivatives thereof for facilities which are intended to produce chemical weapons or chemical weapon precursors outside the United States.

Customer further acknowledges and agrees that, unless a validated export license is obtained from the United States Department of Commerce or other applicable authority, where required, Customer will not use the eQ services, commodities, software, technology or derivatives thereof either directly or indirectly to research, design, develop, manufacture, construct, test or maintain nuclear weapons or any nuclear explosive devices or components or subsystems of such a device or for the research, design, development, manufacture, construction, operation or maintenance of any nuclear reactor, critical facility, facility for the fabrication of nuclear fuel, facility for the conversion of nuclear material from one chemical form to another, or separate storage installation or to research, design, develop, manufacture, construct, operate or maintain any of the following facilities or components for such facilities: for the chemical processing of irradiated special nuclear or source material; for the production of heavy water; for the separation of isotopes of source and special nuclear material; or for the fabrication of nuclear reactor fuel containing plutonium outside the United States.

Each party will reasonably cooperate with the other and will provide to the other promptly upon request any end-user certificates, affidavits regarding re-export or other certificates or documents as are reasonably requested to obtain approvals, consents, licenses and/or permits required for any payment or any export or import of products or services under this Agreement.

The provisions of this Section will survive the expiration or termination of this Agreement for any reason.

9. Insurance. eQ shall secure and maintain in full force and effect throughout the term of this Agreement and for at least one (1) year thereafter insurance coverage with limits of insurance not less than the following: General Liability $1 mil. per occurrence $2 mil. aggregate; automobile liability $1 mil combined single limit; Workers Comp. $500,000 each accident and same total limit; and Errors and Omissions $1 mil. each act and in the aggregate.
Upon written request eQ shall provide appropriate Certificates of Insurance to Customer, with Customer added as additional insured.

10. Data Protection.   This clause shall only apply to the extent that the Customer's personal data is or would be subject to the European Union's General Data Protection Regulation (EU) 2016/679 (GDPR), as may be amended from time to time. The Customer agrees and acknowledges that eQ shall not be considered a data processor (as defined by the GDPR) when providing the Software and/or the Services (as detailed in the schedules hereto and/or any LSDA or SOW issued hereunder or referencing this document) unless the Customer and eQ first enter into a data processing agreement based on eQ's standard (the **Data Processing Agreement**).
If the parties have not entered into the Data Processing Agreement and Customer provides to eQ covered personal data, the Customer shall indemnify eQ in full from and against all costs, expenses (including legal and other professional fees and expenses), fines, losses, damages and all other liabilities of whatever nature (whether contractual, tortious or otherwise) suffered or incurred by eQ and arising out of or in connection with eQ being deemed a data processor on behalf of the Customer.
In the event that eQ is required to process any personal data on behalf of the Customer, the parties undertake to enter into the Data Processing Agreement. For the avoidance of any doubt, the indemnity in this clause 10 shall not be applicable where the parties have entered

into the Data Processing Agreement prior to any personal data (as defined by the GDPR) being processed.

11. General. (a) Successors and Assigns. This Agreement will extend to and be binding upon the successors, legal representatives and valid assigns of the parties. However, this Agreement may not be assigned, sublicensed, or otherwise transferred (by operation of law or otherwise) by either party without the prior written consent of the other party, which consent may be withheld at the sole discretion of the party. Notwithstanding the foregoing, either party may assign this Agreement and all outstanding SOWs and LSDAs referencing same, to its successor (but only to such successor who is not, directly or indirectly in any manner a competitor of the other party), without the consent of the other party, in the event of a merger, divestiture or other similar event, but in such case the entity receiving the assignment must accept and assume this Agreement and such SOWs and LSDAs in writing, agree to pay all monies due hereunder before or after the assignment and otherwise agree to be bound by the terms of this Agreement and such SOWs and LSDAs the same as if such successor entity had been the original party entering into said obligations. Additionally, if any SOW or LSDA is assigned and assumed hereunder, all outstanding SOWs and LSDAs must also be assigned and assumed. In no event shall any assignment shall be deemed a novation of the contract.

(b) Enforcement. The failure of either party to enforce at any time any of the provisions of this Agreement will in no way be construed to be a waiver of such provision, nor in any way affect the validity of this Agreement or any part thereof, or the right of the other party thereafter to enforce each and every provision.

(c) Delay. Neither party will be liable for any delay in or failure to perform any of its non-monetary obligations under this Agreement if due to any cause or condition beyond their reasonable control, whether foreseeable or not.

(d) Enforceability If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

(e) Severability of Actions. It is expressly understood that each and every provision of this Agreement which provides for a limitation of liability, disclaimer of warranties, or exclusion of damages, is intended by the parties to be severable and independent of any other provision and be enforceable as such.

(f) Disclosure. Unless the parties specifically and in writing otherwise agree, eQ may advertise the signing of this Agreement within trade publications and by written press release, newswire and/or the Internet. eQ may disclose the Agreement's general terms, content, value and Customer rationale for selection of eQ as the provider.

(g) Governing law. This Agreement will be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, USA without giving effect to any choice-of-law rules that may require the application of the laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Additionally, the Uniform Computer Information Transactions Act, as enacted, shall not apply.

(h) Amendment. This Agreement may not be amended, altered or modified, except by a writing specifically reciting that it intended as an amendment or modification of this Agreement and executed by an authorized representative of both parties

(i) Headings. Headings and titles of sections and paragraphs are inserted for convenience of reference only and do not necessarily give notice of its contents. Accordingly, those headings and titles are not to be used in the interpretation of this Agreement.

(j) Execution and delivery. A signed copy of this Agreement and any SOW, LSDA or other document referring to this Agreement as a governing or incorporated document may be transmitted electronically in .pdf or similar format, which delivery shall be sufficient to effect legal delivery and to signify agreement. Such electronic copy and signature thereon shall be deemed to have the same effect as an original, hard, paper copy and in proving this Agreement or any SOW, LSDA or such other document, it shall not be necessary to produce a hard or paper copy with original signatures, as long as an electronic copy is produced.

Schedule B
LICENSED SOFTWARE TERMS AND CONDITIONS

1.   Software Orders. Each Customer order for Software will reference this Agreement in the applicable LSDA or other mutually agreed written and signed document. Customer will provide eQ the host identifier required by eQ and such other information reasonably requested by eQ for each workstation and/or server on which the license management portion of the Software will be installed to permit eQ to generate a license file within the license management portion of the Software that will restrict end-user access to only those Software modules licensed under this Agreement and limit use of such Software modules in accordance with the type of license granted. Promptly following eQ's receipt of Customer's notice of a change in Customer's host identifier, certified in writing by a duly authorized representative of Customer, eQ will generate and deliver to Customer a replacement license file within the license management portion of the Software for installation and use by Customer.

2. Software Delivery. eQ will deliver, or cause to be delivered the Software identified in each LSDA as and on the schedule provided in said LSDA   The Software will be deemed delivered when eQ has provided to Customer access to download the Software and software license key(s) to install same. eQ will not deliver the Software on physical media.

3. Software Installation. Customer will, at its expense, obtain all necessary permits and consents to install the Software at Customer's site. If Customer has purchased eQ installation services, eQ will install the Software, or cause it to be installed, in accordance with a mutually agreed upon schedule.

   Customer will at all times maintain records specifically identifying the Software licensed under this Agreement, the location of each copy thereof, and the location and identity of the workstations and servers on which the Software is installed. eQ may, during regular business hours and upon reasonable advance notice, conduct an audit to determine Customer's compliance with the terms and conditions of this Agreement.

Customer will permit eQ or its authorized agents reasonable access to Customer's facilities, workstations and servers and otherwise cooperate fully with eQ in any such investigation and will take all commercially reasonable actions to assist eQ in accurately determining Customer's compliance with the terms and conditions of this Agreement.

   eQ and its authorized agents will comply with Customer's reasonable security regulations while on Customer's premises. If such audit reveals that Customer has breached the terms of this Agreement, in addition to all other remedies, eQ shall be entitled to be reimbursed all costs incurred in conducting such audit.

4. License and Protection. Upon and subject to the terms set forth in this Agreement, eQ grants to Customer, and Customer accepts from eQ, a perpetual, nonexclusive, nontransferable, limited license to install, access and use the executable form of the Software solely in and from the United States or in and from such other country as may be noted in the applicable LSDA as the "**License Designated Country.**" If Customer has acquired a license to Software identified by eQ in the accepted LSDA as being "per server" or "node locked," installation and use of such Software is restricted to a single Customer specified server or workstation, respectively.   If Customer has acquired a license to Software identified by eQ in the accepted LSDA as being "per connection," installation and use of such Software is restricted to connect the eQ application Software to a single logical deployment instance of the specified third party software. If Customer has acquired a license to Software identified by eQ in the accepted LSDA as being "concurrent simultaneous user" or "floating," installation and use of such Software will be controlled by a Customer specified license server or a redundant configuration of three license servers and access to such Software at any given moment in time will be limited to the maximum number of concurrent users licensed to use such Software under this Agreement.   If Customer has acquired a license to Software identified by eQ in the

accepted LSDA as being "per product," installation and use of such Software will be restricted to the number of third party products the Software will be interfaced with on a one-to-one (simultaneous) basis. If Customer has acquired a license to Software identified by eQ in the accepted LSDA as being "named user," installation and use of such Software will be restricted to the individual named user identified by the license management portion of the Software. If Customer has acquired a license to Software designated as a "Non-Production" environment license (including, but not limited to "Development," "QA," "Acceptance,""Test," and "UAT" environments), the use of such Software is strictly limited to non-production purposes. The term "non-production purposes" shall mean the use to configure, develop, test and otherwise set up and prepare the production environment Software of the same type to process data for use in the business of Customer. In the event personal data (as defined in the GDPR) is processed the terms of Section 10 of eQ's General Terms and Conditions, attached as Schedule A shall apply.

Notwithstanding the language in this Section, if the relevant LSDA so provides, a license may be granted hereunder which is not perpetual, but for a designated term. In such event, upon the end of such term, Customer shall cease to use and delete all copies of that Software from its system(s), including backup and standby systems and upon request certify in writing to eQ that all copies have been deleted.

In case an "Evaluation License" is granted for the Software, such Software shall be used for the sole purpose of enabling Customer to internally test, evaluate such Software to determine its usefulness for Customer. Customer shall not use such Software to produce, market, or support its own products or business. Customer may not release or make available such Software or any part thereof to any third party and may not disclose to any third party any evaluation or test results related to such Software. Unless the applicable LSDA provides otherwise, the length of term of any Evaluation License shall be eighty-nine (89) days from the date of delivery of the license key.   Upon the

expiration of the prescribed term or any earlier termination of this Agreement, Customer shall promptly remove all copies of said Software from its machines and systems, and return all tangible materials to eQ. Upon request, an authorized agent of Customer shall certify to eQ that all copies of said Software have been removed from its machines and systems. **All Evaluation Licensed Software are provided 'as-is' with no representations or warranties of any kind.**

For term as well as for perpetual licenses to the Software, eQ may periodically, at its option, re-issue new term limited license files. If the Customer purchased a perpetual term license to the subject Software, eQ shall issue such new license file at no additional cost to Customer. Customer shall be responsible for the installation of the new license file. If the new license file is not installed, the Software will cease to function.

eQ Software Connectors (Plug-Ins) specific to applications work only in conjunction with the underlying eQ application Software. Accordingly, in the event the license for the underlying Software terminates, the Connectors (Plug-Ins) will cease to function and the license to the Connectors (Plug-Ins) terminate.

The Software is not sold; only licensed. No title to or ownership in the Software is transferred to Customer. Title to and all applicable rights in patents, copyrights, intellectual property rights, and trade secrets in the Software will remain in eQ or third parties from whom eQ has obtained rights to license the Software or any part thereof.

Customer acknowledges eQ's representation that the Software constitutes and contains valuable trade secrets and confidential business information of eQ and/or its third party suppliers. Customer will hold such information in confidence and take the precautions necessary to safeguard the confidentiality of such information.

Customer will limit the use of the Software to Authorized Users (defined below) solely for processing the work of Customer's own internal business, including the work of any unincorporated divisions and majority owned subsidiaries of Customer, but excluding

processing the data of or for any other third parties. Without limitation, the following uses of the Software are expressly forbidden (each a "Remarketing of Software"): to cause or permit (i) disclosure, display, access, or use of the Software by anyone other than an Authorized User and (ii) the loan, publication, transfer of possession (whether by sale, exchange, gift, operation of law or otherwise), sublicensing, rental, or other dissemination or use of the Software, in whole or in part, to or for any third party. The term 'Authorized Users' is defined to mean the employees of Customer; and subject to Section 8 of Schedule A, Customer's consultants, agents, and contractors working on Customer's premises who are not competitors of eQ and who have agreed in writing to use restrictions and obligations of confidence and nondisclosure (including restrictions and obligation contained in the following paragraph relating to no reverse engineering, etc.) no less stringent than those set forth in this Agreement. Upon demand, Customer shall provide to eQ list of all Authorized Users and a copy of all such agreements with Authorized Users, certifying its authenticity and enforceability. eQ shall be named and considered a third party beneficiary of each such agreement. The obligations set forth in this Section 4 (License and Protection), including the obligations of confidentiality and nondisclosure will survive any termination of this Agreement. Customer agrees that eQ's third party suppliers may enforce this Agreement directly against Customer as it relates to their Software.

Customer will not reverse engineer, decompile, translate, disassemble, or otherwise attempt to discover the source code of the Software as it contains trade secrets. Additionally, Customer may not distribute, transfer, rent, lease or lend the Software or use or provide access to the Software or any metadata created by the Software, for outsourcing, timesharing or ASP arrangement. Customer may not modify, alter, adapt, or merge the Software or create derivative works therefrom.

Customer may copy the Software as reasonably required in conjunction with Customer's permitted use under this Agreement but only for backup purposes. However, in case of Software which is server base licensed, 'fail-over, 'hot backup' 'load balancing' and 'high availability' copies are not permitted unless the applicable LSDA specifically authorizes same. Customer will retain and reproduce all copyright or proprietary notices in their exact form on all copies (including partial copies) of the Software made by Customer. As between Customer and eQ, the original and all complete and partial copies of the Software, including the eQ Underlying Intellectual Property, will remain the sole property of eQ and will be subject to the terms and conditions of this Agreement, including specifically, but without limitation, the prohibition on Remarketing of Software. eQ reserves the right, in its sole discretion, to grant or not grant rights to remarket eQ Underlying Intellectual Property. If Customer requests such expanded license rights, and eQ agrees to grant them, they will be granted upon such terms, including price, mutually agreed upon in writing by the parties.

If Customer or any of the Authorized Users breach or threaten to breach the obligations of this Section 4, eQ will have the right, in addition to such other remedies which may be available to it, to seek injunctive relief enjoining such acts or attempts, it being acknowledged and agreed by Customer that monetary damages are inadequate to protect eQ.

Customer acknowledges and agrees that the input of data and accuracy and adequacy thereof, including the output generated as a result of such input, is under the exclusive control of Customer. Any use made by Customer of the data output, or any reliance thereon, is the sole responsibility of Customer.

eQ reserves all rights in the Software not explicitly granted herein.

The Software is a commercial product that has been developed exclusively at private expense. If the Software is acquired directly or indirectly on behalf of a unit or agency of the United States Government under the terms of (i) a United States Department of Defense ("DOD") contract, then pursuant to DOD FAR Supplement 227.7202-3(a) and/or FAR 12.212, the United States Government will only have the rights set forth in this Agreement or (ii) a Civilian agency contract, then use, reproduction, or disclosure is subject to the restrictions set forth in FAR clause 27.405(b)(2)(i), entitled Acquisition of

Existing Computer Software, and any restrictions in the agency's FAR supplement and any successor regulations thereto, and the restrictions set forth in this Agreement.

Certain Software ordered by Customer under this Agreement may be prepackaged and licensed either by eQ or its third party suppliers under the terms and conditions of a shrink-wrap license agreement contained on or within the Software package, a point-and-click agreement or other on-line agreement (the "End-User License Agreement"). For such Software, the pricing and payment terms set forth herein are applicable, but all other terms and conditions of this Agreement are superseded and replaced in their entirety by the terms and conditions of the applicable End-User License Agreement. If Customer uses such Software, Customer is hereby bound by, and promises to comply with, the terms and conditions of the applicable End-User License Agreement. If such Software is licensed by an eQ third party supplier, eQ provides such Software to Customer on an "AS-IS" basis as a distributor for the eQ third party supplier, not as a licensor, and Customer agrees to look solely to the eQ third party supplier for any and all associated Software warranty claims or maintenance services.

5. <u>Warranty and Limitation of Remedies</u>. eQ warrants that for a period of 90 days following the date of delivery to Customer (the "Warranty Period") the Software will conform substantially to the application and functionality described in the product Help section embedded within the applicable Software. eQ' sole and exclusive liability, and Customer's sole and exclusive remedy, for a breach of this warranty will be that eQ will provide Software Corrections as defined in, and pursuant to, Schedule C. However, if eQ is unable to provide Software Corrections, as Customer's sole and exclusive remedy at Customer's option, eQ will grant Customer a credit or refund of license fees paid to eQ, for the Software involved and accept its return.

Customer acknowledges and agrees that Software performance and response times are a function of Customer applications requirements and will be affected by, among other factors, the mix of concurrently running applications, any networking capability utilized by Customer on Customer's system and the amount of memory thereon. eQ does not warrant that the Software will operate in conjunction with equipment, software or services that may be obtained by Customer outside this Agreement.

6. <u>General Terms and Conditions</u>. All Software licensed shall be subject to and shall be also governed by eQ's General Terms and Conditions, attached as Schedule A, and incorporated herein.