

SOFTWARE LICENSE, CUSTOMIZATION, AND MAINTENANCE AGREEMENT

This Software License, Customization, and Maintenance Agreement (this "Agreement") is entered into as of _____, 20__ (the "Effective Date") by and between _____, a _____ ("Provider"), and _____, a _____ ("Customer").

RECITALS

Provider provides software known as Commercial Contract Agent, and the parties have agreed that Provider will provide such software to Customer and also modify it to fit certain requirements of Customer's. The parties have also agreed that Provider will provide maintenance and support services related to the software. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below, including those outlined on Attachments A (*Customization Services Statement of Work*) (which is incorporated into this Agreement by this reference), the adequacy of which consideration is hereby accepted and acknowledged, the parties agree as set forth below.

TERMS AND CONDITIONS

1. DEFINITIONS. The following terms will have the following meanings whenever used in this Agreement.

- 1.1. "Customization Services" means such Provider services as are set forth in *Attachment A*.
- 1.2. "Deliverable" means any software or other deliverable created pursuant to Customization Services, in object code format.
- 1.3. "Documentation" means the Software's standard user and installation manuals.
- 1.4. "Go-Live" refers to the earlier of (a) Acceptance of the final Deliverable pursuant to *Attachment A* or (b) Customer's first use of the Software in production.
- 1.5. "License Fee" is defined in Subsection 5.1(a).
- 1.6. "License Term" is defined in Subsection 12.1(a) below.
- 1.7. "Maintenance Term" is defined in Subsection 12.1(b) below.
- 1.8. "Software" means Provider's Commercial Contract Agent software.
- 1.9. "Specifications" means: (a) for the Software, before Go-Live, Provider's standard specifications set forth in the then-current Documentation; (b) for each Deliverable, such specifications and requirements as are listed in *Attachment A*; and (c) for the Software, after Go-Live, the requirements of Subsection 1.4(a) above as modified by Subsection 1.4(b) above.
- 1.10. "Upgrade" means a new version, update, or upgrade of the Software.
- 1.11. "User" means an employee or contractor of Customer.

2. LICENSES & DELIVERY.

- 2.1. License. Provider hereby grants Customer a nonexclusive license to reproduce and use the Software

solely for Customer's internal business purposes, provided: (a) Customer may install no more than ECS Task(s) with a maximum 120 GiB memory for production use; and (b) Customer complies with the restrictions set forth in Section 2.2 below.

- 2.2. Restrictions on Software Rights. Copies of the Software created or transferred pursuant to this Agreement are licensed, not sold, and Customer receives no title to or ownership of any copy or of the Software itself. Furthermore, Customer receives no rights to the Software other than those specifically granted in Section 2.1 (*License*) above. Without limiting the generality of the foregoing, Customer receives no right to and shall not: (a) modify, create derivative works from, distribute, publicly display, or publicly perform, the Software; (b) sublicense or otherwise transfer any of the rights granted in Section 2.1; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from the Software; (d) use the Software for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Software, including without limitation as software-as-a-service; or (e) access or use the Software for any purpose related to the creation of a competing product or service or one with similar functions. Provider grants the license in Section 2.1 under copyright and also, solely to the extent necessary to exercise such rights related to copies of the Software authorized pursuant to this Agreement, under patent and any other applicable intellectual property rights.
- 2.3. Delivery. Provider shall provide the Software and Documentation to Customer, through a reasonable system of electronic download, within 5 days of the Effective Date.
- 2.4. Documentation: Upon delivery of the Software, Provider shall also deliver 2 copies of the Documentation. Provider shall revise the Documentation as reasonably necessary in response to changes to the Software made pursuant to Articles 3 (*Customization Services*) and 4 (*Maintenance*) below. Such revisions will constitute "Documentation" as of delivery to Customer. Customer may reproduce the Documentation solely as reasonably necessary to support internal use of the Software.

3. CUSTOMIZATION SERVICES.

- 3.1. Provision of Customization Services. Provider shall provide the Customization Services, and Customer shall provide such assistance and cooperation (a) as are necessary or convenient to facilitate the Customization Services and (b) as are called for in *Attachment A*.
- 3.2. Deliverables.
 - (a) *Acceptance & Rejection.* Each Deliverable, and the Software itself upon incorporation of the final Deliverable, will be considered accepted ("Acceptance") (i) when Customer provides Provider written notice of acceptance or (ii) 10 days after delivery, if Customer has not first provided Provider with written notice of rejection. Customer may reject a Deliverable or the final Software only in if it materially deviates from its Specifications and only via written notice setting forth the nature of such deviation. In case of rejection, Provider shall correct the deviation and redeliver the Deliverable within 20 days. Redelivery pursuant to the previous sentence will constitute another delivery, and the parties shall again follow the acceptance procedures in this Section 3.2.
 - (b) *Incorporation of Deliverables.* Upon Acceptance, each Deliverable will constitute an element of the Software and will thereafter be subject to this Agreement's terms regarding the Software,

including without limitation license, warranty, and indemnity terms.

4. MAINTENANCE.

- 4.1. Provision of Maintenance. During each Maintenance Term, Provider shall exercise commercially reasonable efforts promptly to correct any failure of the Software to perform according to its Specifications, in response to any trouble ticket Customer submits through Provider's maintenance portal ("Maintenance").
- 4.2. Upgrades
- 4.3. . During each Maintenance Term, Provider shall provide Customer with copies of all Upgrades. Upon delivery to Customer, each Upgrade will constitute an element of the Software and will thereafter be subject to this Agreement's terms regarding Software, including without limitation license, warranty, and indemnity terms.

5. FEES & REIMBURSEMENT.

- 5.1. Fees. Customer shall pay Provider as follows:
- (a) For the licenses granted in Section 2.1 above, \$_____ ("License Fees") per License Term, with each payment due 5 days before the start of such License Term;
 - (b) For Customization Services, such fees as are set forth in *Attachment A* ("Customization Services Fees"). Customer shall also reimburse such expenses as Provider reasonably incurs in provision of Customization Services.
 - (c) For Maintenance (as defined in Section 4.1), \$_____ ("Maintenance Fees") per Maintenance Term, with each payment due 5 days before the start of such Maintenance Term; and
- 5.2. Invoices. Payment against all invoices will be due within 30 days of issuance thereof.
- 5.3. Fees for Renewed Terms. Provider may increase the License Fee and/or Maintenance Fee, effective at the start of the License Term or Maintenance Term following Provider's notice of the increase. No new License Term or Maintenance Term will go into effect before payment of the applicable License Fees or Maintenance Fees.
- 5.4. Taxes. Amounts due under this Agreement are payable to Provider without deduction for any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value-added tax, whether or not withheld at the source (collectively, "Sales Tax"). Except as forbidden by applicable law, Provider may require that Customer submit applicable Sales Taxes to Provider. However, the preceding sentence does not apply to the extent that Customer is tax exempt, provided it gives Provider a valid tax exemption certificate within 30 days of the Effective Date. Provider's failure to include any applicable tax in an invoice will not waive or dismiss its rights or obligations pursuant to this Section 5.4. If applicable law requires withholding or deduction of Sales Taxes or any other tax or duty, Customer shall separately pay Provider the withheld or deducted amount, over and above fees due. For the avoidance of doubt, this Section 5.4 does not govern taxes based on Provider's net income.

6. IP & FEEDBACK.

- 6.1. IP Rights in the Software. Provider retains all right, title, and interest in and to the Documentation and Software, including without limitation Deliverables and Upgrades, except to the extent of the limited licenses specifically set forth in Section 2.1 (*Licenses*) and the last sentence of Section 2.4 (*Documentation*) above. Customer recognizes that the Software and its components are protected by copyright and other laws.
- 6.2. Feedback. Customer hereby grants Provider a perpetual, irrevocable, worldwide license to use any Feedback (as defined below) Customer communicates to Provider during the Term, without compensation, without any obligation to report on such use, and without any other restriction. Provider's rights granted in the previous sentence include, without limitation, the right to exploit Feedback in any and every way, as well as the right to grant sublicenses under copyright, patent, and any other form of intellectual property. Notwithstanding Article 7 (*Confidential Information*), Feedback will not be considered Customer's Confidential Information or its trade secret. ("Feedback" refers to any suggestion or idea for modifying any of Provider's products or services.)

7. CONFIDENTIAL INFORMATION.

- 7.1. Confidential Information Defined. "Confidential Information" refers to the following one party to this Agreement ("Discloser") discloses to the other ("Recipient"): (a) any document Discloser marks "Confidential"; (b) any information Discloser orally designates as "Confidential" at the time of disclosure, provided Discloser confirms such designation in writing within 30 business days; (c) any source code disclosed by Provider and any names of actual or potential customers disclosed by Customer, whether or not marked as confidential; and (d) any other nonpublic, sensitive information Recipient should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient's possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient's improper action or inaction; or (iv) is approved for release in writing by Discloser. Recipient is on notice that Confidential Information may include Discloser's valuable trade secrets.
- 7.2. Nondisclosure. Recipient shall not use Confidential Information for any purpose other than to facilitate the transactions contemplated by this Agreement (the "Purpose"). Recipient: (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and is subject to a written agreement with Recipient with nondisclosure terms no less restrictive than those of this Section 7.2; and (b) shall not disclose Confidential Information to any other third party without Discloser's prior written consent. Without limiting the generality of the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient's attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information to the extent required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest, limit, or protect such required disclosure, at Discloser's expense.

- 7.3. Injunction. Recipient agrees that: (a) no adequate remedy exists at law if it breaches any of its obligations in Section 7.2 (*Nondisclosure*); (b) it would be difficult to determine the damages resulting from its breach of Section 7.2, and such breach would cause irreparable harm to Discloser; and (c) a grant of injunctive relief provides the best remedy for any such breach, without any requirement that Discloser prove actual damage or post a bond or other security. Recipient waives any opposition to such injunctive relief or any right to such proof, bond, or other security. (This Section 7.3 does not limit either party's right to injunctive relief for breaches not listed.)
- 7.4. Termination & Return. The obligations of this Article 7 will survive termination or expiration of this Agreement for any reason. Upon termination or expiration of this Agreement, Recipient shall return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof.
- 7.5. Retention of Rights. Upon termination of this Agreement for any reason, Recipient shall return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof. This Article 7 does not transfer ownership of Confidential Information or grant a license thereto. Discloser retains all right, title, and interest in and to all Confidential Information, except as set forth in Section 2.1 (*Licenses*) and the last sentence of Section 2.4 (*Documentation*) above.
- 7.6. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
- (a) *IMMUNITY*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
 - (b) *USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

8. SOFTWARE AUDIT.

- 8.1. Audit. During the Term and for 60 days thereafter, Provider may audit Customer's use of Software on 10 days' advance written notice. Customer shall cooperate with the audit, including without limitation by providing access to any books, records, computers, or other information that relate or may relate to use of Software. Customer may designate any such books, records, computers, or other information as Confidential Information pursuant to Article 7 (*Confidential Information*). Provider may employ a third party auditor to perform the audit, provided such third party is subject to nondisclosure obligations reasonably consistent with Article 7. Such audit may not unreasonably interfere with Customer's business activities, and Provider may not conduct an audit more than once per calendar year. Provider shall give Customer a written summary of any audit that finds unauthorized exploitation of the Software, and Provider may choose whether to grant Customer a license for unauthorized Software or to require deletion. If Customer has used, reproduced, distributed, or otherwise exploited the Software in excess of 5% of the copies or fees that would

have applied to authorized use, Customer shall reimburse Provider for the reasonable cost of the audit, or of the next audit in case of discovery without an audit, in addition to such other rights and remedies as Provider may have.

- 8.2. Back Fees. For each unauthorized copy of the Software, Customer shall promptly pay (without limitation): (a) all per-copy License Fees and per-copy Maintenance Fees for Software pursuant to Article 5 (*Fees & Reimbursement*), for the period beginning at the start of the License Term during which unauthorized reproduction occurred; and (b) interest at the rate of 1% per month or the maximum rate permitted by law, whichever is less, compounded daily, for the same period.

9. REPRESENTATIONS & WARRANTIES.

9.1. From Provider.

- (a) *Re Function.* Provider warrants that, during the 30 day period following Go-Live, the Software will perform materially as described in its Specifications. In case of breach of the warranty in the preceding sentence, Provider shall: (i) repair the Software; (ii) replace the Software with software of substantially similar functionality; or (iii) if such attempts do not succeed after 60 business days, refund 100% of the applicable License Fee for every month remaining in the License Term, in which case Customer shall promptly cease all use of that Software. The preceding sentence, in conjunction with Customer's right to terminate this Agreement where applicable, states Customer's sole remedy and Provider's entire liability for breach of the warranty in this Subsection 9.1(a).
- (b) *Re Viruses.* Provider warrants that it will take reasonable precautions to ensure that the Software and any media used to distribute it contain no viruses or other computer instructions or technological means intended to disrupt, damage, or interfere with the use of computers or related systems.
- (c) *Re IP Rights in the Software.* Provider warrants that it is the owner of the Software and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the intellectual property rights to the Software in this Agreement without the further consent of any third party and without conditions or requirements not set forth in this Agreement. Provider's representations and warranties in the preceding sentence do not apply to the extent that the infringement arises out of any of the conditions listed in Subsection 10.1(a) (*Exceptions to IP Indemnity*) below. In the event of a breach of the warranty in this Subsection 9.1(c), Provider, at its own expense, shall promptly take the following actions: (i) secure for Customer the right to continue using the Software; (ii) replace or modify the Software to make it noninfringing, provided such modification or replacement will not materially degrade any functionality listed in the Specifications; or (iii) refund 100% of the applicable License Fee for every month remaining in the License Term, in which case Provider may terminate any or all Customer licenses to the Software granted in this Agreement and require return or destruction of copies thereof. In conjunction with Customer's right to terminate for breach where applicable, the preceding sentence states Provider's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Subsection 9.1(c) and for potential or actual intellectual property infringement by the Software.
- (d) *Re Customization Services.* Provider warrants that it will perform all Customization Services in

a professional and workmanlike manner. In case of breach of the warranty the preceding sentence, Provider, at its own expense, shall promptly re-perform the Customization Services in question. The preceding sentence, in conjunction with Customer's right to terminate this Agreement where applicable, states Customer's sole remedy and Provider's entire liability for breach of the warranty in this Subsection 9.1(d).

- 9.2. From Both Parties. Each party warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.
- 9.3. Warranty Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED ABOVE IN THIS ARTICLE 9, PROVIDER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVIDER HAS NO OBLIGATION TO INDEMNIFY, DEFEND, OR HOLD HARMLESS CUSTOMER, INCLUDING WITHOUT LIMITATION AGAINST CLAIMS RELATED TO PRODUCT LIABILITY OR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, EXCEPT AS SPECIFICALLY SET FORTH IN ARTICLE 10 (*Indemnification*) BELOW. Provider does not warrant that the Software will perform without error or that it will run without immaterial interruption. Provider gives no warranty regarding, and will have no responsibility or liability for, any loss arising out of: (a) a modification of the Software made by anyone other than Provider, unless Provider approves such modification in writing; or (b) use of the Software in combination with any operating system not authorized in the Documentation or with hardware or software the Documentation describes as unsuitable (or words to the effect).

10. INDEMNIFICATION.

- 10.1. Indemnity From Provider. Provider shall defend and indemnify Customer and Customer's Associates (as defined below in Section 10.3) against any third party claim, suit, or proceeding arising out of, related to, or alleging infringement or misappropriation of a third party's patent, copyright, trade secret, or other intellectual property right as a result of Customer's authorized use of the Software (an "Indemnified Claim").
- (a) *Exceptions to IP Indemnity*. Provider's obligations set forth in this Section 10.1 do not apply to the extent that an Indemnified Claim arises out of, relates to, or alleges: (i) Customer's breach of this Agreement; (ii) revisions to the Software made without Provider's written consent; (iii) Customer's failure to incorporate Upgrades that would have avoided the alleged infringement; (iv) Provider's modification of Software in compliance with specifications provided by Customer, including without limitation Deliverables to the extent created based on such specifications; or (v) use of the Software in combination with hardware or software not provided by Provider.
- (b) *Response to Claims*. In the event of an Indemnified Claim, Provider may exercise any of the rights set forth in Subsections 9.1(c)(i) through 9.1(c)(iii) above, including without limitation its right therein to terminate licenses and require return of the Software.

- 10.2. Indemnity From Customer. Customer shall indemnify and defend Provider and Provider's Associates (as defined below in Section 10.3) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging: (a) the injury to or death of any individual, or any loss of or damage to real or tangible personal property, caused by the act or omission of Customer or of any of its agents, subcontractors, or employees; or (b) any of the acts or events described in Subsection 10.1(a)(i) through 10.1(a)(v) above.
- 10.3. Litigation & Additional Terms. The party indemnified above pursuant to this Article 10 ("Indemnified Party") shall provide prompt notice of any Indemnified Claim and reasonably cooperate with the other party's ("Indemnitor's") defense. Indemnitor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided: (a) if Indemnitor fails to assume the defense on time to avoid prejudicing the defense, Indemnified Party may defend the Indemnified Claim, without loss of rights pursuant to this Article 10, until Indemnitor assumes the defense; and (b) Indemnified Party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it or its Associate admit wrongdoing or liability or subjects either of them to any ongoing affirmative obligation. Indemnitor's obligations in Sections 10.1 and 10.2 will be excused if either of the following materially prejudices the defense: (i) Indemnified Party's failure to provide prompt notice of the Indemnified Claim; or (ii) Indemnified Party's or an Indemnified Associate's failure reasonably to cooperate in the defense. (As used in this Article 10, a party's "Associates" are its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

11. LIMITATION OF LIABILITY.

- 11.1. Dollar Cap. PROVIDER'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAYABLE TO PROVIDER PURSUANT TO THIS AGREEMENT FOR PRODUCTS AND SERVICES PROVIDED DURING THE YEAR BEFORE THE LAST EVENT GIVING RISE TO THE LIABILITY. THE LIMIT OF LIABILITY IN THE PRECEDING SENTENCE IS CUMULATIVE AND NOT PER-INCIDENT. Provider is not required to spend more than the amount calculated pursuant to the preceding sentence pursuant to Section 10.1 (*Indemnity from Provider*), including without limitation on attorneys' fees, court costs, settlements, judgements, and reimbursement of costs
- 11.2. Excluded Damages. IN NO EVENT WILL PROVIDER BE LIABLE FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 11.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED ABOVE IN THIS ARTICLE 11 APPLY TO THE BENEFIT OF PROVIDER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND THIRD PARTY CONTRACTORS, AS WELL AS: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. Customer acknowledges and agrees that Provider has based its pricing on and entered into this Agreement in reliance upon the limitations of liability and disclaimers of warranties and damages in this Article 11 and in Section 9.3 (*Warranty Disclaimers*) and that such terms form an essential basis of the bargain between the parties. If applicable law limits the application of any provision listed in the preceding sentence, Provider's liability will be limited to the maximum extent permissible.

12. TERM & TERMINATION.

12.1. Term. This Agreement will continue until terminated by either party as specifically authorized herein.

(a) *License Term*. “License Term” refers to the 12 month period following the Effective Date. The License Term will renew automatically for a period of the same duration unless Customer gives written notice of its intent not to renew 30 days before the end of the current License Term. After the 5th renewal of the License Term, Provider may refuse further renewal by written notice 30 days before the next renewal date.

(b) *Maintenance Term*. “Maintenance Term” refers to the same period as the License Term, subject to the separate renewal provisions below. The Maintenance Term will renew automatically for a period of the same duration unless Customer gives written notice of its intent not to renew 30 days before the end of the current Maintenance Term. After the 5th renewal of the Maintenance Term, Provider may refuse further renewal by written notice 30 days before the next renewal date.

12.2. Termination for Cause. Either party may terminate this Agreement for the other’s material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure.

12.3. Effects of Termination. Upon termination of this Agreement or License Term, Customer shall cease all use of the Software and delete, destroy, or return all copies of the Software and Documentation in its possession or control. The following will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Articles and Sections 2.2 (*Restrictions on Software Rights*) 6 (*IP & Feedback*), 7 (*Confidential Information*), 8 (*Software Audit*), 9.2 (*Warranty Disclaimers*), 10 (*Indemnification*), and 11 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

13. MISCELLANEOUS.

13.1. Independent Contractors. The parties are independent contractors and shall so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other’s behalf. The parties agree that no Provider employee or contractor will be an employee of Customer.

13.2. Users. Customer is responsible and liable for the acts and omissions of Users related to this Agreement and to the products and services provided pursuant to this Agreement, as if they were Customer’s own acts and omissions.

13.3. Notices. Notices pursuant to this Agreement shall be sent to the addresses below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (a) actual receipt or (b) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested. For Provider: [REDACTED]. For Customer: [REDACTED].

13.4. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by epidemics, acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of

civil disorder, embargoes, government orders responding to any of the foregoing, or other causes beyond the performing party's reasonable control.

- 13.5. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without Provider's express written consent. Except to the extent forbidden in this Section 13.5, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 13.6. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 13.7. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 13.8. U.S. Government Restricted Rights. This Section 13.8 applies to all acquisitions of the Software (including without limitation Deliverables) or Documentation by or for the United States federal government, including by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the Federal government. The Software and related documentation were developed at private expense and are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 (for civilian agencies) and 48 C.F.R. §227.7202 (for Department of Defense agencies), as applicable. Consistent with and subject to 48 CFR 12.212 and 48 CFR 227.7202-1 through 227.7702-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only such rights as are granted to all other end-users pursuant to the terms herein. Any provisions of this Agreement inconsistent with federal procurement regulations or other federal law are not enforceable against the U.S. Government. Unpublished rights are reserved under the copyright laws of the United States. Customer shall not remove or deface any restricted rights notice or other legal notice appearing in the Software or on any packaging or other media associated with the Software. This Section 13.8 does not grant Customer any rights not specifically set forth in this Agreement, including without limitation any right to distribute the Software to the United States federal government.
- 13.9. Bankruptcy Rights. The rights and licenses in Sections 2.1 (*License*) and 2.4 (*Documentation*) of this Agreement (the "License Provisions") are licenses to "intellectual property," as defined in Section 365(n) of the United States Bankruptcy Code (11 U.S.C. Sections 101, et seq.). If Provider is subject to any proceeding under the United States Bankruptcy Code, and Provider as debtor in possession or its trustee in bankruptcy rejects this Agreement, Customer may, pursuant to 11 U.S.C. Section 365(n)(1) and (2), retain any and all rights granted to it under the License Provisions, to the maximum extent permitted by law. This Section 13.9 will not be construed to limit or restrict any right or remedy not set forth in this Agreement, including without limitation the right to retain any license or authority this Agreement grants pursuant to any provision other than the License Provisions.
- 13.10. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of

Colorado, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Arapahoe [county], Colorado [state] for all cases and controversies arising out of or related to this Agreement, including without limitation tort cases.

- 13.11. Conflicts. If any conflict between *Attachment A* and this main body of this Agreement, this main body will govern.
- 13.12. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 13.13. Technology Export. Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export the Software or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export the Software to, a country subject to a United States embargo (as of the Effective Date, the Crimea Region of Ukraine, Cuba, Iran, North Korea, Sudan, and Syria).
- 13.14. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 13.15. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 13.16. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

CUSTOMER

PROVIDER

By: _____

(signature)

Name: _____

(print)

Title: _____

Date: _____

By: _____

(signature)

Name: _____

(print)

Title: _____

Date: _____

ATTACHMENT A

Customization Services Statement of Work

I. Customization Services & Deliverables. Provider shall provide the following services: [Insert description of Customization Services. Include technical specifications for any Deliverables.]

II. Customer Cooperation. Customer shall reasonably cooperate with Provider in the provision of services and shall provide the following assistance to Provider:

III. Payment.

Customer shall pay Provider the following amounts, each due 30 days after the milestone in question

(each as defined in Item __ of this Attachment A):

- Milestone 1: \$_____.
- Milestone 2: \$_____.
- Final Milestone: \$_____.

In addition, Customer shall pay for Professional Services on a time and materials basis, according to the rate schedule in _____. Provider shall invoice all amounts due on the last day of each calendar quarter.

IV. Additional Provisions. In addition, the parties agree as follows: [Insert termination dates and any other necessary provisions, or "N/A" if none.]
