

## SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("Agreement") contains the terms and conditions between you and/or the entity you represent ("Customer") and Breach Intelligence, Inc. d/b/a/ Polarity ("Polarity") regarding the use of Polarity's Software (as defined in Section 1.5 below). BY ACCEPTING AN ATTACHED QUOTE, PAYING ASSOCIATED INVOICE, CLICKING ON THE "SUBMIT," "ACCEPT" OR SIMILAR BUTTON DURING INSTALLATION OR DOWNLOAD, OR BY ACCESSING OR OTHERWISE USING THE SOFTWARE, CUSTOMER HEREBY REPRESENTS AND WARRANTS THAT SUCH INDIVIDUAL IS DULY AUTHORIZED TO ENTER INTO AND BIND CUSTOMER TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ACKNOWLEDGES AND AGREES THAT ALL SUCH USE BY CUSTOMER IS SUBJECT TO SUCH TERMS AND CONDITIONS.

**EVALUATION LICENSE.** If Customer is licensing the Software (as defined below) for evaluation purposes (an "Evaluation License"), Customer's use of the Software is only permitted in a non-production environment and for thirty (30) days or any other period limited by the license file that enables Customer to activate and use the Software (the "Evaluation Period"). **DURING THE EVALUATION PERIOD, THE SOFTWARE IS PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. POLARITY BEARS NO LIABILITY FOR ANY DAMAGES RESULTING FROM USE (OR ATTEMPTED USE) OF THE SOFTWARE DURING THE EVALUATION PERIOD.**

### 1. DEFINITIONS

1.1 "Confidential Information" means the business, technical and financial information belonging to Polarity and its licensors, including without limitation, all Software, source code, inventions, algorithms, know-how and ideas and the terms and conditions of this Agreement, that is designated in writing as confidential, or that is disclosed in a manner that a reasonable person would understand the confidentiality of the information disclosed. Confidential Information does not include information that (i) is previously rightfully known to Customer without restriction on disclosure, (ii) is or becomes known to the general public, through no act or omission on the part of Customer, (iii) is disclosed to Customer by a third party without breach of any separate nondisclosure obligation, or (iv) is independently developed by Customer.

1.2 "Documentation" means any administration guides, installation and user guides, and release notes that are normally provided by Polarity to end users of the Software.

1.3 "Intellectual Property Rights" means patents, design patents, copyrights, trademarks, Confidential Information, know-how, trade secrets, moral rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.4 "Quote" means the software quote provided by Polarity.

1.5 "Software" means the Polarity products, components and modules in object code format, as further described in a Quote.

### 2. LICENSE GRANTS AND RESTRICTIONS

2.1 License. There are no implied licenses under this Agreement and Polarity and its licensors reserve all rights, title and interest in and to the Software not expressly granted to Customer under this Agreement. All Software licensed pursuant to this Agreement is unpublished copyrighted material, constitutes trade secrets and proprietary data of Polarity and is Confidential Information of Polarity. Subject to Customer's compliance with the terms and conditions of this Agreement, Polarity grants to Customer a worldwide, non-exclusive, non-sublicensable, non-transferable license as set forth herein.

#### 2.2 License to Use Software.

2.2.1 Customer may use the Software only (i) in accordance with the Documentation, (ii) for Customer's internal business purposes and (iii) for the Term. Customer has no right to receive, use or examine any source code or design documentation relating to the Software. This Agreement is a license, not a sale of the Software and does not give Customer any rights not expressly granted herein. Title and any related rights in the content accessed through use of the Software is the property of the applicable content owner and is protected by applicable law. The licenses granted pursuant to this Agreement give Customer no rights to such content.

2.3 Restrictions. Customer will not and will not allow a third party to: (i) decompile, reverse engineer, disassemble or otherwise attempt to derive, analyze or use any source code or underlying ideas or algorithms related to the Software by any means whatsoever (except to the extent that such restrictions are prohibited by applicable statutory law); (ii) remove or alter any product identification, copyright or other notices; (iii) use or allow the use of the Software by or for the benefit of third parties, including without limitation by renting, leasing, lending, timesharing, or using for service bureau purposes; (iv) except as specified in the Documentation provided by Polarity, incorporate into or with other software any part of the Software; (v) reproduce the Software; (vi) sell, distribute, translate or market the Software; (vii) create derivative works based on the Software, or (viii) use the Software outside of any use restrictions set forth in the Quote. Customer agrees to ensure that there is no breach, compromise or violation, by Customer employees, consultants, or independent contractors, of such obligations and Polarity's rights and title to the Software. Customer shall be responsible for any breach, compromise or violation of this Agreement by any employees, consultants or independent contractors of Customer.

2.4 Installation/Deinstallation. If needed, Customer agrees to permit access by Polarity to Customer's computer server for the purpose of installing and, after termination, removing the Software. Prior to installation and removal of the Software, Customer shall be solely responsible for backing-up all data on the applicable computer server.

### 3. LIMITED WARRANTY & DISCLAIMER

3.1 Limited Warranty. Polarity warrants to Customer that: (i) the Software will materially perform in accordance with the applicable Documentation for thirty (30) days after initial delivery to Customer; and (ii) the Software as delivered by Polarity does not contain any Trojan horses, worms, or undocumented disabling devices.

3.2 Exclusions. Polarity's warranties in this Section 3 shall not extend to problems that result from: (i) Customer's failure to implement all updates issued by Polarity during the warranty period; (ii) any alterations or additions to the Software not performed by or at the direction of Polarity; (iii) failures in operation of the Software that are not reproducible by Polarity; (iv) Software operated in violation of this Agreement or not in accordance with Documentation therefor; or (v) failures which are caused by Customer's software or other software, hardware or products not licensed or provided hereunder.

3.3 Remedies. For any Software not in conformance with this Section 3, Polarity will, at its discretion and cost, either repair or replace the Software. This is Customer's exclusive remedy, and Polarity's sole liability arising in connection with the limited warranties herein.

3.4 Disclaimer. EXCEPT AS OTHERWISE STATED HEREIN, NEITHER POLARITY NOR ITS SUPPLIERS MAKE ANY OTHER WARRANTIES, AND HEREBY DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, REGARDING THE USE AND RESULTS OF THE TECHNOLOGY, OR THAT USE WILL BE UNINTERRUPTED OR ERROR-FREE, AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE.

#### **4. OWNERSHIP**

4.1 Polarity Ownership of Software. Polarity and its licensors retain all rights, title, and interest, and all Intellectual Property Rights, in the Software and Documentation, including any modifications, enhancements, maintenance releases, error corrections, patches, releases, workarounds, updates and upgrades thereto.

4.2 Third Party Software. Customer's license to third party software that is installed on, embedded within or used in connection with its Software (operating systems and the like) will be governed exclusively by the terms of the separate software license agreements of the third party, and such licenses will be shipped with the Software. In connection with the Software, Polarity may use, or provide Customer access to, software, source code or other technology ("In-Licensed Materials") licensed to Polarity from, and owned by, third parties ("Third Party Licensors"), as identified in the documentation delivered to Customer. Customer acknowledges and agrees that in addition to this Agreement, use of In-Licensed Materials shall be subject to, and requires prior acceptance of, all other terms and conditions set forth in a license agreement provided with the In-Licensed Materials. Some third party technology, as may be necessary or appropriate for use with some programs provided by Third Party Licensors, is licensed to Customer solely for use with the Software under the terms of the third party license agreement specified in the Software package documentation or as Customer is otherwise notified by Polarity and not under the terms of this Agreement. Customer agrees that the Third Party Licensors and suppliers are intended third party beneficiaries to this Agreement.

#### **5. PAYMENT**

Customer will pay to Polarity the fees for use of the Software specified in the Quote. Customer will be responsible for all taxes (including sales, use, property, excise, value added and gross receipts but not including taxes based on Polarity's income), import duties and fees and charges of any kind levied or imposed by any federal, state or local governmental entity with respect to the Software.

#### **6. TERM AND TERMINATION**

6.1 License Term. Except for use during an Evaluation Period, the term of the licenses granted hereunder will be for the term set forth in the Quote (the "Term").

6.2 Termination. Customer may terminate this Agreement and the licenses granted herein at any time by destroying or removing from all computer systems all copies of the Software. This Agreement and the licenses granted herein will immediately and automatically terminate (i) if the maximum usage limitations as set forth in the applicable Quote are exceeded; (ii) if Customer breaches any provision of this Agreement; (iii) if Customer becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement or comparable proceeding; or (iv) as otherwise set forth in this Agreement.

6.3 Effects of Termination. Upon termination of this Agreement, all licensed rights granted in this Agreement will immediately cease, and Customer will promptly discontinue all use of the Software and Documentation and return to Polarity or destroy all copies of the Software, Documentation and any other Polarity Confidential Information on tangible media in Customer's possession or control and certify in writing to Polarity that it has fully complied with these requirements.

6.4 Survival. The following provisions will survive any expiration or termination of this Agreement: 3.4 (Disclaimer), 4 (Ownership), 6.3 (Effects of Termination), 6.4 (Survival), 6 (Limitations of Liability), 7 (Indemnification), 9 (Confidentiality) and 10 (General).

#### **7. LIMITATIONS OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, POLARITY AND ITS SUPPLIERS WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE AMOUNTS RECEIVED BY POLARITY IN RESPECT OF THE SOFTWARE; (II) ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS; (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES; (IV) LOSS, INACCURACY, OR CORRUPTION OF DATA OR INTERRUPTION OF USE; OR (V) ANY MATTER BEYOND ITS REASONABLE CONTROL. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### **8. INDEMNIFICATION**

**8.1 Indemnity.** Polarity will defend, indemnify and hold Customer harmless against any third party claims, liabilities or expenses incurred (including reasonable attorneys' fees), as well as amounts finally awarded in a settlement or by a court arising from any claim or allegation by a third party that the Software infringes or misappropriates a valid United States patent, copyright or trade secret right of a third party; *provided* that Customer gives Polarity: (i) prompt written notice of any such claim or allegation; (ii) control of the defense and settlement thereof; and (iii) reasonable assistance in such defense or settlement. If any Software becomes or, in Polarity's opinion, is likely to become the subject of an injunction, Polarity may, at its option, (a) procure for Customer the right to continue using such Software, (b) replace or modify such Software so that it becomes non-infringing without substantially compromising its functionality, or, if (a) and (b) are not reasonably available to Polarity, then (c) terminate Customer's license to the allegedly infringing Software. The foregoing states the entire liability of Polarity with respect to infringement of patents, copyrights, trade secrets or other intellectual property rights.

**8.2 Exclusions.** The foregoing obligations shall not apply to: (i) Software modified by any party other than Polarity, if the alleged infringement relates to such modification, (ii) Software combined or bundled with any non-Polarity products, processes or materials where the alleged infringement relates to such combination, (iii) the use of a version of the Software other than the version that was current at the time of such use, as long as Polarity shall have provided Customer with such non-infringing version, (iv) Software created to the specifications of Customer, or (v) infringement or misappropriation of any proprietary right in which Customer has an interest. Customer will defend, indemnify and hold Polarity harmless against any costs, claims, damages or expenses incurred (including reasonable attorneys' fees), as well as amounts finally awarded in a settlement or by a court arising from any such claim or allegation, subject to conditions reciprocal to those in Section 8.1.

## **9. CONFIDENTIALITY**

Except as expressly and unambiguously allowed herein, Customer will hold in confidence and not use or disclose any Confidential Information and shall similarly bind its employees, consultants, independent contractors and clients in writing. Upon the expiration or termination of this Agreement, all of the Confidential Information (including any copies) will be returned to Polarity, and Customer will make no further use of such materials. If required by law, Customer may disclose Confidential Information of Polarity, but will give adequate prior notice of such disclosure to Polarity to permit Polarity to intervene and to request protective orders or other confidential treatment thereof.

## **10. EXPORT**

The Software and related technical data may be subject to U.S. export control laws, including without limitation the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer shall comply with all such regulations and agrees to obtain all necessary licenses to export, re-export, or import the Software and related technical data.

## **11. GENERAL**

**11.1 No Agency.** Polarity and Customer each acknowledge and agree that the relationship established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to: (i) give either party the power to direct or control the day-to-day activities of the other; (ii) deem the parties to be acting as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (iii) permit either party or any of either party's officers, directors, employees, agents or representatives to create or assume any obligation on behalf of or for the account of the other party for any purpose whatsoever.

**11.2 Compliance with Laws.** Each party agrees to comply with all applicable laws, regulations, and ordinances relating to their performance hereunder. Without limiting the foregoing, Customer warrants and covenants that it will comply with all then current laws and regulations of the United States and other jurisdictions relating or applicable to Customer's use of the Software including, without limitation, those concerning Intellectual Property Rights, invasion of privacy, defamation, and the import and export of software.

**11.3 Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party.

**11.4 Notices.** Any notice required or permitted hereunder shall be in writing in English and shall be delivered as follows (with notice deemed given as indicated): (i) by personal delivery when delivered personally; (ii) by established overnight courier upon written verification of receipt; (iii) by facsimile transmission when receipt is confirmed orally; (iv) by certified or registered mail, return receipt requested, upon verification of receipt; or (v) via email with verified receipt. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this section. Notices shall be sent to such addresses as either party may from time to time designate to the other in writing.

**11.5 Confirmations.** Upon request by Polarity, Customer agrees to reasonably cooperate with Polarity's auditors to confirm Customer's compliance with the terms and conditions of this Agreement.

**11.6 Marketing; Publicity.** Customer agrees to allow Polarity to state that the Customer is a customer on its website and marketing materials. Polarity may issue press releases, white papers and case studies in text and video that references the Customer and its license of the Software, subject to the Customer's prior review and written approval.

**11.7 Governing Law; Venue and Jurisdiction.** This Agreement shall be interpreted according to the laws of New York without regard to or application of choice-of-law rules or principles. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in New York, NY and the parties hereby consent to the personal jurisdiction and venue therein.

11.8 Injunctive Relief. The parties agree that monetary damages would not be an adequate remedy for the breach of certain provisions of the Agreement, including, without limitation, all provisions concerning infringement, confidentiality and nondisclosure, or limitation on permitted use of the Software. The parties further agree that, in the event of such breach, injunctive relief would be necessary to prevent irreparable injury. Accordingly, either party shall have the right to seek injunctive relief or similar equitable remedies to enforce such party's rights under the pertinent provisions of the Agreement, without limiting its right to pursue any other legal remedies.

11.9 Entire Agreement and Waiver. This Agreement shall constitute the entire agreement and contains all terms and conditions between Polarity and Customer with respect to the subject matter hereof and all prior agreements, representations, and statement with respect to such subject matter are superseded hereby. This Agreement may be changed only by written agreement signed by authorized representatives of both Polarity and Customer. No failure of either party to exercise or enforce any of its rights under this Agreement shall act as a waiver of subsequent breaches; and the waiver of any breach shall not act as a waiver of subsequent breaches.

11.10 No Other Terms. No text or information set forth on any other purchase order, preprinted form or document (other than a Quote) shall add to or vary the terms and conditions of this Agreement.

11.11 Severability. In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law, and the other provisions of this Agreement will remain in full force and effect. The parties further agree that in the event such provision is an essential part of this Agreement, they will begin negotiations for a suitable replacement provision.

11.12 Assignment. Customer may not, without the prior written consent of Polarity, assign this Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to do so shall be a material default of this Agreement and shall be void. Polarity may freely assign this Agreement at any time. This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto, their respective successors and permitted assigns.

11.13 United States Government Users. If a user or Customer of the Software is an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Software, or any related documentation of any kind, including technical data or manuals, is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation 227.7202 for military agencies. The Software is commercial computer software and the related documentation is commercial computer software documentation. The use of the Software and related documentation is further restricted in accordance with the terms of this Agreement, and any modification hereto.