



Software Subscription License Agreement

This Software Subscription License Agreement (the “**Agreement**”), is by and between the “**Licensor**”

Licensor Name	AgilePoint, Inc.
Type of business	Corporation
Jurisdiction of registration	Delaware
Address	1916 Old Middlefield Way, Suite B, Mountain View, CA 94043, USA

and the “**Licensee**” and together with Supplier, the “**Parties**”, and each, a “**Party**”.

This Agreement is effective as of the last date stated on the signature page (the “**Effective Date**”).

WHEREAS, Licensor desires to license the Software to Licensee; and

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

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

1. Definitions.

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Software.

“**Acceptance Criteria**” means the specifications and Documentation provided by Licensor.

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

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

“**Agreement**” has the meaning set forth in the preamble.

“**Authorized Platforms**” means the type and number of separate operating environments indicated in Exhibit A with which the Products are designed to be compatible, on the Effective Date and afterwards during the Term.

“**Authorized User**” means Licensee’s employees, consultants, contractors, and agents who are authorized by Licensee to access and use the Software.

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

“**Confidential Information**” has the meaning set forth in [Section 9.1](#).

“**Designated Site(s)**” means any of Licensee’s facilities if applicable.

“**Disclosing Party**” has the meaning set forth in [Section 9.1](#).

“**Documentation**” means any manuals, instructions, or other documents or materials that the Licensor provides or makes available to Licensee in any form or medium and which describe the functionality, components, features, or requirements of the Software or Licensor Materials, including any aspect of the installation, configuration, integration, operation, use,

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support, or maintenance thereof. See <https://documentation.agilepoint.com/>.

“**Effective Date**” has the meaning set forth in the preamble.

“**Feedback**” has the meaning set forth in [Section 10.5](#).

“**Fees**” has the meaning set forth in [Section 8.1](#).

“**Force Majeure Event**” has the meaning set forth in [Section 15.9\(a\)](#).

“**Harmful Code**” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Licensee or any Authorized User from accessing or using the Software or Licensor’s systems as intended by this Agreement. Harmful Code does not include any Licensor Disabling Device.

“**Indemnitee**” has the meaning set forth in [Section 12.3](#).

“**Indemnitor**” has the meaning set forth in [Section 12.3](#).

“**Initial Term**” has the meaning set forth in [Section 14.1](#).

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights Laws, and all similar or equivalent rights or forms of protection, in any part of the world.

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

“**License Restriction**” has the meaning set forth in [Section 3](#).

“**Licensee**” has the meaning set forth in the preamble.

“**Licensee Indemnitee**” has the meaning set forth in [Section 12.1](#).

“**Licensee Data**” means information, data, and other content, including, but not limited to, Personal Information and Sensitive Personal Information, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Licensee or an Authorized User by or through the Software or that incorporates or is derived from the Processing of such information, data, or content by or through the Software. For the avoidance of doubt, Licensee Data does not include Resultant Data or any other information reflecting the access or use of the Software by or on behalf of Licensee or any Authorized User.

“**Licensee Systems**” means the Licensee’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Licensee or through the use of third-party services.

“**Licensor**” has the meaning set forth in the preamble.

“**Licensor Disabling Device**” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Licensor or its designee to disable Licensee’s or any Authorized User’s access to or use of the Software automatically with the passage of time or under the positive control of Licensor or its designee.

“**Licensor Indemnitee**” has the meaning set forth in [Section 12.2](#).

“**Licensor Materials**” means the Software, Specifications and Documentation, and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Licensor in connection with the Software or otherwise comprise or relate to the Software or Licensor Systems. For the avoidance of doubt, Licensor Materials include Resultant Data and any information, data, or other content derived from Licensor’s monitoring of Licensee’s access to or use of the Software, but do not include Licensee Data.

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“**Licensor Systems**” means the Licensor’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Licensor or through the use of third-party services.

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

“**Maintenance Release**” means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Licensor may provide to Licensee from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software.

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

“**Permitted Use**” means use of the Software by an Authorized User for the benefit of Licensee in the ordinary course of its internal business operations; provided however that Software that is not designated as "Production" in Exhibit A shall only be used for internal non-production activities, such as development, disaster recovery, staging, testing, or training.

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

“**Personal Information**” means information that Licensee provides or for which Licensee provides access to Licensor, or information which Licensor creates or obtains on behalf of Licensee, in accordance with this Agreement that: (i) directly or indirectly identifies an individual (including, for example, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal identifiers), in case of both subclauses (i) and (ii), including Sensitive Personal Information as defined herein). Licensee’s business contact information is not by itself Personal Information.

“**Process**” means to take any action or perform any operation or set of operations that the Software are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Rate Adjustment**” has the meaning set forth in [Section 8.1](#).

“**Receiving Party**” has the meaning set forth in [Section 9.1](#).

“**Renewal Term**” has the meaning set forth in [Section 14.2](#).

“**Representatives**” means, with respect to a Party, that Party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

“**Resultant Data**” means data and information related to Licensee’s use of the Software that is used by Licensor in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Software.

“**Sensitive Personal Information**” means an individual’s (i) government-issued identification number, including Social Security number, driver’s license number, or state-issued identification number; (ii) financial account number, credit report information, or credit, debit, or other payment cardholder information, with or without any required security or access code, personal identification number, or password that permits access to the individual’s financial account; or (iii) biometric, genetic, health, or health insurance data.

“**Software**” means (a) the executable, object code version of the software that is identified in Exhibit A, and (b) any Maintenance Releases for which Licensee pays subscription and maintenance fees pursuant to this Agreement.

“**Software Support**” has the meaning set forth in [Section 5.1](#).

“**Specifications**” means the specifications and system requirements for the Software, including those set forth at:

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<https://documentation.agilepoint.com/11/installation/wlinstallSystemRequirements.html>

“**Support Exhibit**” has the meaning set forth in [Section 5.1](#).

“**Term**” has the meaning set forth in [Section 14.2](#).

“**Territory**” means the United States of America.

“**Third-Party Materials**” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Software that are not proprietary to Licensor (e.g. Telerik).

“**Warranty Period**” has the meaning set forth in [Section 11.2](#).

2. License.

2.1 License Grant. Subject to and conditioned on Licensee’s payment of Fees and compliance with all other terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-sublicensable, and non-transferable (except in compliance with [Section 15.8](#)) license to use the Software and Documentation solely for the Permitted Use at Designated Sites on Authorized Platforms until the end of the Term or until this Agreement is terminated, whichever is earlier.

2.2 Scope of Licensed Access and Use. As indicated in **Exhibit A**, Licensee may install, use, and run (a) the number of copies of the Software on Licensee’s network according to the ‘AgilePoint Server Environments’ section, and (b) for use by up to the aggregate number of Authorized User(s) at a time at the Designated Site(s) and/or remotely according to the ‘User Seats and Apps’ section. The total number of Authorized Users and/or Designated Site(s) shall not exceed the number set forth in **Exhibit A**, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the license fees payable hereunder. All copies of the Software (a) will remain the exclusive property of Licensor; (b) be subject to the terms and conditions of this Agreement; and (c) must include all copyright or other Intellectual Property Rights notices contained in the original. This Agreement does not apply to Licensor’s hosted or cloud-based solutions (“Cloud” deployments), use of which requires a separate agreement with Licensor.

2.3 Security Measures. The Software may contain technological measures designed to prevent unauthorized or illegal use of the Software. Licensor may use these and other lawful measures to verify Licensee’s compliance with the terms of this Agreement and enforce Licensor’s rights, including all Intellectual Property Rights, in and to the Software. Licensor may deny any individual access to and/or use of the Software if Licensor, in its discretion, believes that person’s use of the Software would violate any provision of this Agreement, regardless of whether Licensee designated that person as an Authorized User. Licensor and its Representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Licensee’s computers, systems and software, that Licensor may gather periodically to improve the performance of the Software or develop Maintenance Releases. This information will be treated in accordance with Licensor’s privacy policy, as amended from time to time, which can be viewed at: <https://www.agilepoint.com/trust-center>

2.4 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

- (a) Licensor has and will retain sole control over the operation, provision, maintenance, and management of the Licensor Materials; and
- (b) Licensee has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Licensee Systems, and sole responsibility for all access to and use of the Software and Licensor Materials by any Person by or through the Licensee Systems or any other means controlled by Licensee or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Software or Licensor; (ii) results obtained from any use of the Software or Licensor Materials; and (iii) conclusions, decisions, or actions based on such use.

2.5 Suspension or Termination. Licensor may, directly or indirectly, and by use of a Licensor Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Licensee’s, any Authorized User’s, or any other Person’s access to or use of all or any part of the Software or Licensor Materials, without incurring any resulting obligation or liability, if: (a) Licensor receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Licensor to do so; (b) Licensee’s account becomes delinquent; or (c) Licensor believes, in its good faith and reasonable discretion, that: (i) Licensee or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Software beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of the

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Specifications; (ii) Licensee or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Software; or (iii) this Agreement expires or is terminated. This Section 2.5 does not limit any of Licensor's other rights or remedies, whether at law, in equity, or under this Agreement.

3. License Restrictions.

3.1 Restrictions. Licensee shall not, and shall not permit any other Person to, use the Software or Licensor Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Licensee shall not, and shall not permit any other Person to, except as this Agreement expressly permits:

- (a) copy the Software or Licensor Materials, in whole or in part;
- (b) modify, correct, adapt, translate, enhance, or otherwise prepare any derivative works or improvements of any Software;
- (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Software or Licensor Materials to any third party;
- (d) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software or Licensor Materials, in whole or in part;
- (e) bypass or breach any security device or protection used for or contained in the Software or Documentation;
- (f) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy of the Software or Documentation;
- (g) use the Software or Licensor Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable Law;
- (h) use the Software for purposes of: (i) benchmarking or competitive analysis of the Software; (ii) developing, using, or providing a competing software product or service; or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage;
- (j) use the Software or Licensor Materials in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Software could lead to personal injury or severe physical or property damage; or
- (k) use the Software or Documentation other than for the Permitted Use or in any manner or for any purpose or application not expressly permitted by this Agreement.

The restrictions outlined in this Section 3 are each a "**License Restriction.**"

3.2 Export Regulation. Licensee agrees to comply strictly with all applicable export Laws and assume sole responsibility for obtaining any necessary licenses to export or re-export. Licensor and its licensors make no representation that the Software is appropriate, or will be or should be made available, for use outside the United States, Canada or European Union. The Software may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, including, but not limited to, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. To the extent Licensee makes the Software available to Authorized Users outside of the United States, Canada or European Union, Licensee understands and acknowledges that it is responsible and liable for complying with the applicable export control Laws (e.g. United States Export Administration Act) and their associated regulations. Licensee shall not, directly or indirectly, export, re-export or release the Software or the underlying software or technology to, or make the Software or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export or release is prohibited by Law. Licensee shall comply with all applicable Laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing or otherwise making the Software or the underlying software or technology available outside the Territory.

3.3 Service Usage and Configuration. **Exhibit A** sets forth Fees for designated levels of usage (a "**Service Allocation**"), beginning with the Fees payable by Licensee for the levels of usage in effect as of the Effective Date. Licensee may increase its Service Allocation and corresponding Fee obligations as agreed.

4. Delivery.

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4.1 Deliverable. Licensor shall deliver one copy of the Software electronically to Licensee within five (5) Business Days of the Effective Date or when Licensee is prepared to receive it, whichever is later.

4.2 Acceptance. Licensee has thirty (30) days after the delivery date to test whether the Software conforms in all material respects to the Acceptance Criteria. If Licensee believes that the Software fails to conform in any material respect to the Acceptance Criteria, Licensee must provide written notice to Licensor detailing the non-compliance, and Licensor will either correct the non-conformities or provide an acceptable workaround in a timely manner. If Licensee does not send written notice within thirty (30) days after the delivery date the Software will be deemed accepted.

4.3 Corrective Action and Notice. If Licensee becomes aware of any actual or threatened activity prohibited by [Section 3.1](#), Licensee shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Software and Licensor Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Licensor of any such actual or threatened activity.

4.4 Non-Solicitation. During the Term and for one year after, Licensee shall not, and shall not assist any other Person to, directly or indirectly recruit or solicit for employment or engagement as an independent contractor any Person then or within the prior twelve (12) months employed or engaged by Licensor or any of Licensor's subcontractors. In the event of a violation of this Section 4.4, Notwithstanding the forgoing, a party may hire a person employed or engaged by the other party or subcontractor who responds to a general solicitation for employment. Licensor will be entitled to liquidated damages equal to the compensation paid by Licensor to the applicable employee or contractor during the prior six (6) months.

5. Service Levels.

5.1 Service Support. Licensor's technical support services ("**Software Support**") at the support levels Licensee purchases (pursuant to **Exhibit A**) will be provided as outlined in separate Support Agreement with Licensee.

5.2 Professional Services. Installation of the Software, modules and Maintenance Releases, integrations, mentorship and training may be performed by AgilePoint personnel pursuant to a Statement of Work for additional fees or as outlined separately as Professional Services in Exhibit A. Such Statements of Work shall be amendments and made part of this Agreement. Any custom process, application or solution development will be provided by Licensor's Professional Services Department as agreed to in a separate Master Software Agreement.

5.3 Service Management. Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation, and decision-making regarding this Agreement. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. If either party's service manager ceases to be employed by such party or such party otherwise wishes to replace its service manager, such party shall promptly name a new service manager by written notice to the other party. Licensee's service manager will be responsible for (i) creating and distributing access information, application URL's, access credentials and other information required to access the Software, (ii) managing application- or role-specific security for Authorized Users, including process authorization and administrative permissions, (iii) educating and enforcing compliance of internal Authorized Users with the acceptable usage of the Software as intended and do not violate a License Restriction (see Section 3), and, (iv) subsequent to notification of maintenance or outage, communicating any impacts and timeframes to Licensee stakeholders.

6. Changes and Maintenance Releases.

6.1 Changes. Licensor reserves the right, in its sole discretion, to make any changes to the Software and Licensor Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Licensor's products and services to its customers; (ii) the competitive strength of or market for Licensor's products and services; or (iii) the Software's cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, Licensee may, at any time during the Term, request in writing changes to the Software. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.

6.2 Maintenance Releases. During the Term, Licensor will provide Licensee with all Maintenance Releases (including updated Documentation) that Licensor may, in its sole discretion, make available for Software, provided Licensee has paid all Fees for such Maintenance Release. All Maintenance Releases provided by Licensor to Licensee are deemed Software. Licensee will install all Maintenance Releases as soon as practicable after receipt.

7. Security. Licensee has and will retain sole responsibility for:

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- (a) all Licensee Data, including its content and use;
- (b) all information, instructions, and materials provided by or on behalf of Licensee or any Authorized User in connection with the Software;
- (c) Licensee's Systems;
- (d) the security and use of Licensee's and its Authorized Users' Access Credentials; and
- (e) all access to and use of the Software and Licensor Materials directly or indirectly by or through the Licensee Systems or its or its Authorized Users' Access Credentials, with or without Licensee's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

8. Fees and Payment.

8.1 **Fees.** Licensee shall pay Licensor the fees set forth in **Exhibit A** ("Fees") in accordance with this Section 8. Fees may be adjusted (each a "**Rate Adjustment**") due to: (i) additional functionality and/or usability requested by Licensee, and (ii) annual renegotiation of terms of the license. If any changes to the rates are required prior to an annual renegotiation, Licensor will notify Licensee with as much advance notice as possible; at that time, Licensee and AgilePoint will negotiate the Rate Adjustment(s) in good faith and commensurate with the anticipated changes. If no agreement is reached regarding the Rate Adjustment within thirty 30 days, either party may terminate this Agreement pursuant to Section 14.3(b).

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

8.3 **Payment.** Licensee shall pay all Fees owing under this Agreement within thirty (30) days after the date of the invoice therefor. Licensee shall make all payments hereunder in US dollars by wire transfer to the account specified in **Exhibit A**, or such other address or account as Licensor may specify in writing from time to time.

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

- (a) Licensor may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;
- (b) Licensee shall reimburse Licensor for all costs incurred by Licensor in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and
- (c) without limiting Licensor's option of suspension pursuant to Section 2.5, if such failure continues for thirty (30) days following written notice thereof, Licensor may: (i) disable Licensee's use of the Software until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Licensee or any other Person by reason of such suspension; (ii) withhold, suspend or revoke its grant of a license hereunder; and/or (iii) terminate this Agreement under Section 14.3(a) or Section 14.3(b), as applicable.

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

9. Confidentiality.

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

9.2 **Exclusions.** Confidential Information does not include information that: (a) was rightfully known to the Receiving Party

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

9.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- (b) except as may be permitted by and subject to its compliance with Section 9.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9.3; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9;
- (c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;
- (d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure; and
- (e) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this [Section 9](#).
- (f) Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this [Section 9](#) with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

9.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under [Section 9.3](#); and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this [Section 9.4](#), the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

10. Intellectual Property Rights.

10.1 Intellectual Property Ownership. Licensee acknowledges and agrees that:

- (a) the Software and Documentation are licensed, not sold, to Licensee by Licensor and Licensee does not have under or in connection with this Agreement any ownership interest in the Software or Documentation, or in any related Intellectual Property Rights;
- (b) Licensor and its licensor(s) are the sole and exclusive owners of all right, title, and interest in and to the Software and Documentation, including all Intellectual Property Rights relating thereto, subject only to the rights of third parties and the limited license granted to Licensee under this Agreement; and
- (c) Licensee hereby unconditionally and irrevocably assigns to Licensor or Licensor's designee, its entire right, title, and interest in and to any Resultant Data and Intellectual Property Rights that Licensee may now or hereafter have in or relating to the Software or Documentation (including any rights in derivative works or patent improvements relating to either of them), whether held or acquired by operation of law, contract, assignment or otherwise.

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

- (a) safeguard the Software and Documentation (including all copies thereof) from infringement, misappropriation, theft,

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misuse, or unauthorized access;

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

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

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

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

10.4 Licensee Data. As between Licensee and Licensor, Licensee is and will remain the sole and exclusive owner of all right, title, and interest in and to all Licensee Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in [Section 10.3](#).

10.5 Feedback. If Licensee provides suggestions, comments or other input relating to the Licensor Materials (collectively, "Feedback") then Licensee shall grant and hereby grants Licensor a perpetual, worldwide, royalty free license to use any such Feedback without restriction.

11. Representations and Warranties.

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

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

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

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

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

11.2 Limited Warranty. Subject to the limitations and conditions set forth in [Section 11.3](#) and [Section 11.4](#), Licensor warrants to Licensee that for a period of ninety (90) days from the date of installation of the Software, until the end of the Term or until the Agreement is terminated, whichever is earlier (the "**Warranty Period**"):

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

(b) no Maintenance Release, when correctly installed by Licensee in accordance with the Documentation and this Agreement, will have a material adverse effect on the functionality of the Software.

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

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

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- (a) Software, or the media on which it is provided, that is modified or damaged by Licensee or its Representatives;
- (b) any operation or use of, or other activity relating to, the Software other than as specified in the Documentation, including any incorporation in the Software of, or combination, operation or use of the Software in or with, any technology (including any software, hardware, firmware, system, or network) or service not specified for Licensee's use in the Documentation;
- (c) Licensee's or any third party's negligence, abuse, misapplication, or misuse of the Software, including any use of the Software other than as specified in the Documentation;
- (d) Licensee's failure to promptly install all Maintenance Releases that Licensor has previously made available to Licensee;
- (e) the operation of, or access to, Licensee's or a third party's system or network;
- (f) any beta software, software that Licensor makes available for testing or demonstration purposes, temporary software modules or software for which Licensor does not receive a license fee;
- (g) Licensee's breach of any provision of this Agreement; or
- (h) any other circumstances or causes outside of the reasonable control of Licensor (including abnormal physical or electrical stress).

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

- (a) repair the Software with an update;
- (b) replace a component of the Software with functionally equivalent software (which software will, on its replacement of the Software, constitute Software hereunder); and/or
- (c) amend, supplement, or replace any incomplete or inaccurate Documentation;
- (d) terminate this Agreement and refund the prorated fees paid by Licensee under this Agreement during the current subscription term.

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

11.6 **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN [SECTION 11.1](#) AND [SECTION 11.2](#), ALL LICENSED SOFTWARE, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS, AND SERVICES PROVIDED BY LICENSOR ARE PROVIDED "AS IS." LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE OR LICENSOR MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN LICENSEE AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

12. Indemnification.

12.1 **Licensor Indemnification.** Licensor shall indemnify, defend, and hold harmless Licensee, Licensee's Affiliates and each of their respective officers, directors, employees, agents, successors, and permitted assigns (each, a "**Licensee Indemnitee**") from and against any and all Losses incurred by Licensee Indemnitee resulting from any Action by a third party (other than an Affiliate of a Licensee Indemnitee) that Licensee's or an Authorized User's use of the Software (excluding Licensee Data and Third-Party Materials) in accordance with this Agreement (including the Specifications) infringes or misappropriates such third party's United States patent, trademark or copyright in the Territory. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

- (a) Third-Party Materials or Licensee Data;

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- (b) combination, operation, or use of the Software in or with, any technology (including any software, hardware, firmware, system, or network) or service not provided by Licensor or specified for Licensee's use in the Documentation;
- (c) modification of the Software other than: (i) by Licensor in connection with this Agreement; or (ii) with Licensor's express written authorization and in strict accordance with Licensor's written directions and specifications;
- (d) use of any version of the Software other than the most current version or failure to timely implement any Maintenance Release, modification, update, or replacement of the Software made available to Licensee by Licensor;
- (e) use of the Software after Licensor's notice to Licensee of such activity's alleged or actual infringement, misappropriation, or other violation of a third party's rights;
- (f) negligence, abuse, misapplication, or misuse of the Software or Documentation by or on behalf of Licensee, Licensee's Representatives, or a third party;
- (g) use of the Software or Documentation by or on behalf of Licensee that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to Licensor's instructions;
- (h) events or circumstances outside of Licensor's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or
- (i) act, omission, or other matter described in Section 12.2, whether or not the same results in any Action against or Losses by any Licensor Indemnitee.

12.2 Licensee Indemnification. Licensee shall indemnify, defend, and hold harmless Licensor, Licensor's Affiliates and each of their respective officers, directors, employees, agents, subcontractors, successors and permitted assigns (each, a "**Licensor Indemnitee**") from and against any and all Losses incurred by the Licensor Indemnitee resulting from any Action by a third party to the extent that such Losses arise out of or result from, or are alleged to arise out of or result from:

- (a) Licensee Data;
- (b) any Intellectual Property Rights or other right of any Person, or any Law, is or will be infringed, misappropriated, or otherwise violated by any:
 - (i) use or combination of the Software by or on behalf of Licensee or any of its Representatives with any hardware, software, system, network, service, or other matter whatsoever that is neither provided by Licensor nor authorized by Licensor in this Agreement and the Documentation; and
 - (ii) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Licensee or any Authorized User, including Licensor's compliance with any specifications or directions provided by or on behalf of Licensee or any Authorized User to the extent prepared without any contribution by Licensor;
- (c) relating to facts that, if true, would constitute Licensee's breach of any of its representations, warranties, covenants, or obligations under this Agreement; or
- (d) relating to abuse, misapplication or misuse or omission by or on behalf of Licensee or any of its Representatives with respect to the Software or Documentation or otherwise in connection with this Agreement.

12.3 Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to [Section 12.1](#) or [Section 12.2](#), as the case may be. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnitee's prior written consent. The Indemnitee's failure to perform any obligations under this Section 12.3 will not relieve the Indemnitor of its obligations under this [Section 12](#), except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure.

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

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

(b) modify or replace the Software and Licensor Materials, in whole or in part, to seek to make the Software and Licensor Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Software and Licensor Materials, as applicable, under this Agreement; or

(c) by written notice to Licensee, terminate this Agreement with respect to all or part of the Software and Licensor Materials, and require Licensee to immediately cease any use of the Software and Licensor Materials or any specified part or feature thereof, provided that, subject to Licensee's compliance with its post-termination obligations set forth in Section 14.4, Licensee will be entitled to a refund commensurate with (i) the loss of functionality in the context of the entirety of the Software that Licensee purchased, and (ii) the time remaining in the current Term.

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

13. Limitations of Liability.

13.1 EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 13.3, IN NO EVENT WILL LICENSOR, OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST PRODUCTION, USE, BUSINESS, REVENUES OR PROFITS, (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF ANY LICENSED SOFTWARE; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 CAP ON MONETARY LIABILITY. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN SECTION 13.3, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF LICENSOR AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT IN THE TWELVE- (12-) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13.3 Exceptions. The exclusions and limitations in Section 13.1 and Section 13.2 do not apply to Licensor's obligations under Section 12.

14. Term and Termination.

14.1 Initial Term. The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until the date indicated in Exhibit A (the "Initial Term").

14.2 Renewal Term. This Agreement will automatically renew for additional successive twelve (12) month terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").

14.3 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Licensor may terminate this Agreement, effective on written notice to Licensee, if Licensee:

(i) fails to pay any amount when due, and such failure continues more than thirty (30) days after Licensor's delivery of written notice thereof ("Payment Failure");

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(ii) breaches any of its obligations under [Section 3.1](#) or [Section 9](#); or

(iii) Licensor has reason to believe there has been fraud or misrepresentation in connection with Licensee's use of the Software.

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

(c) either party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

14.4 Effect of Termination or Expiration. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses and authorizations granted to Licensee hereunder will immediately terminate;

(b) Licensee shall (A) immediately cease all use of and other activities with respect to the Software and Licensor Materials; (B) within thirty (30) days deliver to Licensor, or at Licensor's written request destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls, the Software, the Documentation and the Licensor's Confidential Information, including all documents, files, and tangible materials (and any partial and complete copies) containing, reflecting, incorporating, or based on any of the foregoing, whether or not modified or merged into other materials; and (C) certify to Licensor in a written instrument that it has complied with the requirements of this Section 14.4; and

(c) if Licensee terminates this Agreement pursuant to Section 14.3(b), Licensee will be relieved of any obligation to pay any additional Fees attributable to the period after the effective date of such termination and Licensor will: (i) refund to Licensee Fees paid in advance for Software that Licensor has not performed as of the effective date of termination (for the avoidance of doubt, this does not include a prorated amount of annual fees), and (ii) pay to Licensee any unpaid Service Credits to which Licensee is entitled; and

(d) if Licensor terminates this Agreement pursuant to Section 14.3(a) or Section 14.3(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Licensee shall pay such Fees, together with all previously-accrued but not yet paid Fees, on receipt of Licensor's invoice therefor.

14.5 Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: [Section 3.1](#), [Section 8](#), [Section 9](#), [Section 10](#), [Section 11.6](#), [Section 12](#), [Section 13](#), [Section 14.4](#), [this Section 14.5](#), and [Section 15](#).

15. Miscellaneous.

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

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

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

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15.4 Notices. Except as otherwise expressly set forth in this Agreement, any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to each Party.

15.5 Interpretation. For purposes of this Agreement: (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

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

15.7 Entire Agreement. The End User License Agreement that Licensee “accepts” during the installation (by clicking ‘Yes’ button) will not be applicable to the extent this Agreement applies to the Software. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments, and appendices, the following order of precedence governs: (a) first, this Agreement, excluding its exhibits, schedules, attachments, and appendices; (b) second, the exhibits, schedules, attachments, and appendices to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

15.8 Assignment. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensor’s prior written consent. Notwithstanding the preceding sentence, on assignment, Licensee may assign its rights under this Agreement to (i) an Affiliate, (ii) an acquirer of substantially all of Licensee’s stock or assets, or (iii) a successor by merger. No assignment, delegation, or transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 15.8 is void. This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. Any actual or proposed change in control of Licensee that results or would result in a direct competitor of AgilePoint directly or indirectly owning or controlling 1% or more of Licensee shall entitle AgilePoint to terminate this Agreement for cause immediately. Any assignment by Licensee must be a permanent transfer of all of Licensee’s rights under this Agreement one time, provided Licensee retains no copies, Licensee transfers all of the Software (including all component parts, the media and printed materials, any upgrades and this Agreement), Licensee does not receive any payment or other compensation for transferring the Software and the recipient agrees to the terms of this Agreement. If the Software portion is an upgrade, any transfer pursuant to this Section 15.8 must include all prior versions of the Software.

15.9 Force Majeure.

15.9.1 No Breach or Default. In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments) when and to the extent such failure or delay is caused by any circumstances beyond such party’s reasonable control (a “Force Majeure Event”), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the Effective Date, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either Party may terminate this Agreement if a Force Majeure Event affecting the other Party continues substantially uninterrupted for a period of thirty (30) days or more.

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

15.10 Third-Party Beneficiaries. The Parties do not confer any rights or remedies upon any Person other than the parties to this Agreement and their respective successors and permitted assigns.

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15.11 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as such in relation to this Agreement and signed by an authorized representative of each Party. This Agreement will prevail and take precedence over all terms and conditions that are preprinted, typed, stamped or handwritten on any quotation form, invoice, acknowledgment form, or purchase order utilized by any party in the transactions covered by this Agreement. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

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

15.13 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. The United Nations Convention on the International Sale of Goods is hereby disclaimed. The Parties expressly agree that the Uniform Computer Information Transactions Act shall not apply to this Agreement and, to the extent that it is applicable, the parties agree to opt-out of its applicability pursuant to its provisions. Except for actions to protect Intellectual Property Rights and to enforce an arbitrator's decision hereunder, any disputes, controversies, action, proceeding or claims arising out of or relating to this Agreement or licenses granted hereunder, or any breach thereof, may be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in the County of Santa Clara, California. The arbitrator shall apply the laws of the State of California and the United States of America to all issues in dispute, including but not limited to the California Evidence Code. Notwithstanding the foregoing, no discovery of any kind shall be taken by either party without the written consent of the other party; provided, however, that either party may seek the arbitrator's permission to take any deposition which is necessary to preserve the testimony of a witness who either is, or may become, outside the subpoena power of the arbitrator or otherwise unavailable to testify at the arbitration. The arbitrator shall have the power to enter any award that could be entered by a Judge of the Circuit Court of the State of California sitting without a jury, and only such power, except that the arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of the State of California or any other applicable law. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Notwithstanding the foregoing, the parties irrevocably submit to the non-exclusive jurisdictions of the County of Santa Clara County, California and the United States District Court, Northern District of California in any action to enforce an arbitration award. Notwithstanding the foregoing, no term or condition contained in this Agreement shall prevent either party from seeking all remedies available to them. Service of process, summons, notice, or other document by mail to such Party's address set forth herein will be effective service of process for any suit, action, or other proceeding brought in any such arbitration or court.

15.14 Language. If this agreement is translated into any language other than English, the English language version shall prevail.

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

15.16 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under [Section 2.4](#), [Section 3.1](#), [Section 4.3](#), [Section 8](#), [Section 9](#), [Section 10](#) or [Section 12](#) of this Agreement would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

15.17 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party against the other Party arising out of this Agreement, the prevailing Party is entitled to recover its attorneys' fees, arbitration costs and court costs from the non-prevailing Party.

15.18 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of

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which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

15.19 US Government Rights. Each of the Documentation and the software components that constitute the Software is a “commercial item” 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. Accordingly, if Licensee is an agency of the US Government or any contractor therefor, Licensee only receives those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

The Parties hereto have executed this Agreement as of the date first above written.

EXHIBIT A
SOFTWARE

AgilePoint NX Platform and SharePoint Add-in