

END USER SOFTWARE LICENSE AGREEMENT

THIS END USER SOFTWARE LICENSE AGREEMENT (“**AGREEMENT**”) IS THE LEGAL AGREEMENT THAT GOVERNS YOUR USE OF THE ASSET MANAGEMENT SOFTWARE MADE AVAILABLE BY **[Insert Reseller Name]** (“**LICENSOR**”). FOR PURPOSES OF THIS AGREEMENT, THE TERM “**SOFTWARE**” MEANS THE SOFTWARE LICENSED TO LICENSOR IN ITS CAPACITY AS A RESELLER BY PRIMARY LICENSOR (“**PRIMARY LICENSOR**”) AS SUCH SOFTWARE IS LISTED ON THE APPLICABLE ORDERING DOCUMENT (“**LICENSE ORDER FORM**”) BETWEEN YOU AND THE LICENSOR, THE DOCUMENTATION (AS HERINAFTER DEFINED). THIS AGREEMENT IS BETWEEN YOU, THE CUSTOMER WHO HAS ACQUIRED THE SOFTWARE (“**YOU**”), AND LICENSOR. THIS AGREEMENT SETS FORTH THE TERMS AND CONDITIONS UNDER WHICH CUSTOMER MAY (I) USE THE PROPRIETARY SOFTWARE THAT IS SPECIALLY LICENSED TO CUSTOMER PURSUANT TO A LICENSE ORDER FORM; AND (II) USE THE USER DOCUMENTATION MADE GENERALLY AVAILABLE IN HARD COPY OR ELECTRONIC FORM TO ITS GENERAL CUSTOMER BASE IN CONJUNCTION WITH THE LICENSING OF SUCH SOFTWARE (THE “**DOCUMENTATION**”).

PRIMARY LICENSOR IS AN INTENDED THIRD-PARTY BENEFICIARY TO THIS AGREEMENT, AND UPON YOUR ACCEPTANCE OF THIS AGREEMENT, PRIMARY LICENSOR WILL HAVE THE RIGHT (AND WILL BE DEEMED TO HAVE ACCEPTED THE RIGHT) TO ENFORCE THE TERMS OF THIS AGREEMENT AGAINST YOU AS A THIRD-PARTY BENEFICIARY OF THIS AGREEMENT IN PLACE OF LICENSOR. PRIMARY LICENSOR SHALL ALSO BE THE INTENDED THIRD-PARTY BENEFICIARY OF ALL PROTECTIONS PROVIDED TO LICENSOR UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE SECTIONS PERTAINING TO LIMITATION OF LIABILITY, WARRANTY DISCLAIMERS AND THE RIGHT OF LICENSOR TO DISCONTINUE OR DENY ACCESS TO THE SOFTWARE IN THE EVENT OF NON-PAYMENT. PRIMARY LICENSOR MAY TERMINATE THIS AGREEMENT OR OTHERWISE DENY ACCESS IN THE EVENT OF NON-PAYMENT BY RESELLER TO PRIMARY LICENSOR. FURTHERMORE, PRIMARY LICENSOR, AS OWNER OF THE SOFTWARE AND MATERIALS, RESERVES ALL RIGHTS TO ENFORCE ANY AND ALL VIOLATIONS OF INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS.

CUSTOMER ACKNOWLEDGES AND AGREES THAT PRIMARY LICENSOR IS NOT BOUND BY AND WILL NOT BE LIABLE TO CUSTOMER FOR ANY DIFFERENT OR ADDITIONAL TERMS WITH RESPECT TO THE SOFTWARE OR SERVICES THAT MAY BE CONTAINED IN CUSTOMER’S AGREEMENT WITH RESELLER, AND CUSTOMER SHALL LOOK SOLELY TO RESELLER WITH RESPECT TO ANY SUCH RESELLER TERMS.

LICENSOR IS ONLY WILLING TO PROVIDE THE SOFTWARE TO YOU ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. YOU ACCEPT THIS AGREEMENT BY SIGNING WHERE INDICATED BELOW. BY SIGNING THIS AGREEMENT, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT, PERSONALLY OR IF YOU HAVE NAMED A COMPANY AS CUSTOMER, ON BEHALF OF THE COMPANY NAMED AS CUSTOMER, AND TO BIND EITHER YOURSELF OR SUCH COMPANY TO THE TERMS OF THIS AGREEMENT.

IF YOU DID NOT ACQUIRE THE SOFTWARE FROM LICENSOR, THEN YOU MAY NOT ENTER INTO THIS AGREEMENT OR USE THE SOFTWARE. NO OTHER PARTY HAS THE RIGHT TO TRANSFER A COPY OF THE SOFTWARE TO YOU.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, LICENSOR DOES NOT HAVE THE AUTHORITY TO MODIFY THE TERMS OF THIS AGREEMENT.

1. LICENSE ORDER FORM.

Prior to your download of the Software, You and the Licensor entered into a License Order Form that sets out certain additional terms and conditions relating to your license of the Software.

1.1. **Software.** The Software consists of (a) certain components that are designated by Primary Licensor, as server software ("**Server Software**") that permit you to manage creative asset files stored on the one or more internal servers for which you have purchased a license (each, a "**Server**"), and (b) certain client-side plug-in and extension utility components that permit the number of your internal employees for whom you have purchased a use license concurrently to access and use the Server Software and the files stored on the Server ("**Client Software**"). The Server Software and the Client Software are collectively referred to herein as the "**Software**". Depending on the specific set of Software components for which you have paid the corresponding license fees, certain components may not be available to You in your Software installation and are not covered by the licenses granted in this Agreement. In the event there is a change in your systems or hardware that requires the issuance of new licenses for the Software, no such licenses shall be issued unless you are currently have an active, fully-paid maintenance and support plan in effect for the Software.

1.2. **Server Software.** Subject to the terms and conditions of this Agreement, Licensor grants you a subscription-based, fixed term, worldwide, nonexclusive, royalty free (upon full payment of subscription fees), revocable and nontransferable license during the term set forth on the License Order Form, to (a) install and execute, in each case on the Server in your possession, one (1) copy of the Server Software for which you have paid the corresponding license fees, in executable object code form solely in accordance with the Documentation and solely to establish and use (and for all software products other than Xinet on an internal basis and by the number of concurrent users for whom you have paid the corresponding license fees), one or more volumes of creative

asset files to be stored on your Licensor Server and (b) to make one (1) copy of the Server Software for which you have paid the corresponding license fees, solely for backup or archival purposes. The subscription license will expire upon expiration of the term set forth in the License Order Form unless and until it is renewed as per the terms and conditions of renewal set forth in the License Order Form.

1.3. Client Software.

1.3.1 **Subscription Grant.** The following applies if you have purchased subscription licenses. Subject to the terms and conditions of this Agreement, Licensor, grants you a subscription-based, fixed term, worldwide, nonexclusive, royalty free (upon full payment of subscription fees), revocable and nontransferable license during the term set forth on the License Order Form, to make a reasonable number of copies of the Client Software and to install and execute such copies of the Client Software on end-user computers in your possession, in each case solely in executable object code form and in accordance with the Documentation, solely for your internal business purposes, and to enable the number of concurrent users for whom you have paid the corresponding license fees to access and use the Server and upload and download files from the Server. The subscription license will expire upon expiration of the term set forth in the License Order Form unless and until it is renewed as per the terms and conditions of renewal set forth in the License Order Form.

1.3.2 **Perpetual License Grant.** The following applies if you have purchased perpetual licenses. Subject to the terms and conditions of this Agreement and upon full payment of all license fees, Licensor grants you a perpetual, worldwide, nonexclusive, nontransferable royalty free license to make a reasonable number of copies of the Client Software and to install and execute the Software and to install and execute such copies of the Client Software on end-user computers in your possession, in each case solely in executable object code form and in accordance with the Documentation, solely for your internal business purposes, and to enable the number of concurrent users for whom you have paid the corresponding license fees to access and use the

Server

and upload and download files from the Server.

1.4. Software Users

1.4.1. Software Use. You are considered a Software User hereunder. For clarity, a third party will be deemed to be a User if it has any access to the Software or has any of its files stored on the Server. Unless otherwise agreed in writing between you and Licensor, you shall be limited to no more than the number of Users set out in the License Order Form.

You will be solely responsible for each User's use of the Software and any services provided by you to any User. Licensor and its suppliers make no warranty, and have no obligation to provide support or other services to any User. You will defend and indemnify Licensor and its suppliers from any claims or liabilities arising from or related to any User to whom you provide access to the Software. You must enter into transactions with each User on your own account and not on behalf of Licensor. Without limiting any other rights or remedies it may have under this Agreement or under applicable laws, in the event Licensor determines, in its reasonable discretion, that you may be in breach of the restrictions contained in this Agreement (including without limitation, those contained in this Section 1.4), Licensor shall have the right, upon 10 days prior written notice to you, to suspend or terminate the rights of any or all Users hereunder, in whole or in part. Upon receipt of any such notice and expiration of such 10-day period, you shall immediately suspend or terminate (as applicable) all access to the Software and the Server for any such Users.

2. RESTRICTIONS ON USE.

You acknowledge, and will notify each User, that the Software and its structure, organization, and source code constitute valuable trade secrets of Primary Licensor, Licensor and its suppliers. In no event shall You disassemble, decompile, or reverse engineer the Software or Confidential Information (as defined in Section 6) or permit others to do so. Disassembling, decompiling and reverse engineering include, without limitation: (i) converting the Software from a machine-readable form into a human-readable form; (ii)

disassembling or decompiling the Software by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof; (iii) examining the machine-readable object code that controls the Software's operation and creating the original source code or any approximation thereof by, for example, studying the Software's behavior in response to a variety of inputs; or (iv) performing any other activity related to the Software that could be construed to be reverse engineering, disassembling, or decompiling. To the extent any such activity may be permitted pursuant to written agreement, the results thereof will be deemed Confidential Information subject to the requirements of this Agreement. You may use Licensor's Confidential Information solely in connection with the Software and pursuant to the terms of this Agreement. Furthermore, except as permitted in Section 1.4, you shall not sublicense, lease, rent, loan, or otherwise transfer the Software to any third party, or otherwise use or copy the Software except as expressly allowed under Section 1.

3. DELIVERY, ACCEPTANCE AND VERIFICATION.

3.1. **Delivery.** The Software is licensed and not sold, and the nonexclusive license set forth in this Agreement is not a sale of the Software or any copy. Title to the media on which the Software is recorded will transfer to you upon the delivery to you of such media, and the Software shall be deemed irrevocably and unconditionally accepted upon such delivery. Title to the Software always remains with Primary Licensor. The entity from which you purchased the Software shall deliver and install the Software. For purposes of this Agreement, delivery will be deemed complete when the entity from which you purchased the Software physically delivers, or causes a third party to deliver, the Software to you. Licensor, the entity from whom you purchased the Software, or a third party will provide you with a license key that is required to activate and use the Software. The license key will be provided via email or other like method at Licensor's discretion. The license key is used to ensure that the Software operates in

accordance with the license granted to you in this Agreement. As such, the Software may contain time-out devices, counter devices, or other similar devices intended to prevent the Software from being used beyond the bounds of the license. You consent to such activity and agree not to disable, attempt to disable, or tamper with the license key system or any other such license enforcement technology.

3.2. **Archival and Backup Copies.** Subject to the restrictions set forth herein, you may make a reasonable number of copies of the Master Copy solely for archival purposes and backup use in accordance with your standard backup processes in emergency situations.

3.3. **Marking.** You shall not delete any copyright notices, proprietary legends, any trademark and service mark attributions, any patent markings, and other indicia of ownership and confidential markings on all copies of the Software and any other materials provided to You, in the content and format contained on the Master Copy and such materials. You shall pay all duplication and distribution costs incurred by you in making copies of the Software and shall also pay all custom duties and fees if applicable. Subject only to the license granted herein, all copies of the Software and any other materials provided to you are the property of Primary Licensor, Licensor or their respective third-party licensors from whom Licensor has obtained marketing rights.

3.4. **Records.** You shall keep and maintain complete and accurate records of each copy of the Software including any and all pertinent usage information. you shall, upon Primary Licensor or Licensor's request, provide reports specifying the cumulative total of copies, and all other reasonably pertinent usage information. All reports are to be delivered within thirty (30) days of such request.

3.5. **Verification.** During the Term (as defined below) of this Agreement and for a period of two (2) years following any termination or expiration of this Agreement, You shall maintain written records related to the use of the Software by you, as reasonably necessary to verify compliance with the licensing and usage terms of

this Agreement. Such records will be kept in accordance with your records retention policy and records retention schedule applicable thereto. Not more than once annually, and with notice of not less than twenty (20) business days, Licensor may (or may engage a third-party, which will be subject to a confidentiality obligation), to verify compliance ("**Verification**"). Verification will take place during normal business hours and in a manner that does not interfere unreasonably with your operations. At Licensor's option, Licensor may request, and you hereby agree to complete, a self-audit questionnaire relating to your usage under the rights granted by Licensor to you in this Agreement. If Verification or self-audit reveals unlicensed use of the Software, you agree to compensate Licensor for such usage. All costs of the Verification will be borne by Licensor unless unlicensed usage of 5% or more is found ("**Material Unlicensed Usage**".) If Material Unlicensed Usage is found during Verification, you shall reimburse Licensor for the actual costs associated with performance of the Verification. Licensor and any third-party involved in the Verification will use the information obtained in compliance review only to enforce Licensor's rights and to determine your compliance with the terms of the licenses granted in this Agreement. By invoking the rights and procedures described in this Section 3.5, Licensor does not waive its rights to enforce other terms of this Agreement, including, but not limited to, any intellectual property rights by other means as permitted by law.

4. **AFFILIATES AND THIRD PARTIES.**

At the direction and sole discretion of Primary Licensor and/or Licensor, affiliates of Primary Licensor or Licensor (the "**Affiliates**") may perform certain tasks related to Licensor's obligations and rights under the License Order Form and this Agreement, including, but not limited to, invoicing, payment, technical support, project management and/or sales support. You hereby consent to the Affiliates' role. You further agree and acknowledge that Licensor and you are the only parties to this Agreement, and that any action taken by Affiliates in connection with the performance of Licensor's obligations under the License Order Form and this Agreement will not give rise to any cause of action against the Affiliates, regardless of the

theory of recovery. Each party shall at all times retain full responsibility for its Affiliates' compliance with the applicable terms and conditions of this Agreement. Licensor will have the right to use third parties, including offshore entities who employ foreign nationals, as well as employees and contractors of Licensor Affiliates and subsidiaries, who may also be foreign nationals (collectively, "**Subcontractors**") in the performance of its obligations hereunder and, for purposes of this Agreement, all references to Licensor or its employees will be deemed to include such Subcontractors. Licensor will have the right to disclose your Confidential Information to such third parties provided such third parties are subject to confidentiality obligations similar to those between you and Licensor.

5. OWNERSHIP

5.1. **Reservation of Rights.** By signing this Agreement and/or downloading or using the Software, you irrevocably acknowledge that, subject to the licenses granted herein, you have no ownership interest in the Software or materials provided to you. Primary Licensor owns all right, title, and interest in such Software or materials, subject to any limitations associated with intellectual property rights of third parties. Primary Licensor and Licensor reserve all rights not specifically granted herein.

5.2. **Marks and Publicity.** Primary Licensor and Customer trademarks, trade names, service marks, and logos, whether or not registered ("Marks"), will be the sole and exclusive property of the respective owning party, whom owns all right, title and interest therein. Licensor may, with your prior approval which may be withheld in your sole discretion: (i) use Your name and/or logo within product literature, press release(s), social media, and other marketing materials; (ii) quote your statements in one or more press releases; and/or (iii) make such other use of your name and/or logo as may be agreed between the parties. Additionally, Licensor may, with your prior approval which may be withheld in your sole discretion, include your name and/or logo within its list of customers for general promotional purposes. Licensor shall comply with your trademark use guidelines when they are communicated to Licensor in writing and if you agree in writing that

Licensor may use your Marks, Licensor will use your Marks in a manner approved by you. Neither party grants to the other any title, interest or other right in any Marks except as provided in this Section 5.

6. CONFIDENTIALITY

6.1. **Definition.** All information which is defined as Confidential Information hereunder in tangible form will be marked as "Confidential" or the like or, if intangible (e.g. visually or orally disclosed), will be designated as being "Confidential" at the time of disclosure and will be confirmed as such in writing within thirty (30) days of the initial disclosure. "**Confidential Information**" may include all technical, product, business, financial, and other information regarding the business and software programs of either party, its customers, employees, investors, contractors, vendors and suppliers, including, but not limited to, programming techniques and methods, research and development, computer programs, documentation, marketing plans, customer identity, and business methods. Without limiting the generality of the foregoing, Confidential Information includes all information and materials disclosed orally or in any other form, regarding Primary Licensor and Licensor software products or software product development, including, but not limited to, the configuration techniques, data classification techniques, user interface, applications programming interfaces, data modeling and management techniques, data structures, and other information of or relating to Primary Licensor and Licensor software products or derived from testing or other use thereof. Confidential Information includes all such Confidential Information that may have been disclosed by either party to the other party, before or after the first License Order Form Term Start Date. Confidential Information includes information generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by a party that contains, reflects, or is derived from such information. For clarity, the term 'Confidential Information' does not include any personally identifiable information. For the purpose of this entire Section 6, the terms 'Primary Licensor' and 'Licensor' includes all of their respective Affiliates.

6.2. Confidentiality of Software. The following is deemed Primary Licensor Confidential Information with or without marking or written confirmation: (i) the Software and other related materials furnished by Licensor; (ii) the oral and visual information relating to the Software and provided in Licensor's training classes; and (iii) representation methods of modeled data.

6.3. Exceptions. Without granting any right or license, the obligations of the parties hereunder shall not apply to any material or information that:

(i) is or becomes a part of the public domain through no act or omission by the receiving party; (ii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (iii) is rightfully obtained from a third party without any obligation of confidentiality to the receiving party; or (iv) is already known by the receiving party without any obligation of confidentiality prior to obtaining the Confidential Information from the disclosing party. In addition, neither party will be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government, provided that notice is promptly given to the party whose Confidential Information is to be disclosed so that such party may seek a protective order and engage in other efforts to minimize the required disclosure. The parties shall cooperate fully in seeking such protective order and in engaging in such other efforts.

6.4. Ownership of Confidential Information. Nothing in this Agreement will be construed to convey any title or ownership rights to the Software or other Primary Licensor Confidential Information or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest in Primary Licensor Confidential Information to you. Nothing in this Agreement will be construed to convey any title or ownership rights to your Confidential Information or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest in your Confidential Information to Licensor or Primary Licensor. Neither party shall, in whole or in part, sell, lease, license, assign, transfer, or disclose the Confidential Information to any third party and shall not copy,

reproduce, or distribute the Confidential Information except as expressly permitted in this Agreement. Each party shall take every reasonable precaution, but no less than those precautions used to protect its own Confidential Information, to prevent the theft, disclosure, and the unauthorized copying, reproduction, or distribution of the Confidential Information.

6.5. Non-Disclosure. Each party agrees at all times to use all reasonable efforts, but in any case, no less than the efforts that each party uses in the protection of its own Confidential Information of like value, to protect Confidential Information belonging to the other party. Each party agrees to restrict access to the other party's Confidential Information only to those employees, who (i) require access in the course of their assigned duties and responsibilities, and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this Section 6. Notwithstanding anything contained hereunder and subject to the confidentiality obligations set forth under this Section 6, all references to Licensor or its employees under this Section 6 will be deemed to include such employees of Licensor Affiliates and Subcontractors and Licensor will ensure that its Subcontractors abide by the applicable terms of the Agreement.

6.6. Injunctive Relief. Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party will be entitled to, in addition to any other remedies available at law or in equity, temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under this Section 6.

6.7. Suggestions/Improvements to Software. Notwithstanding this Section 6, unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by you regarding the Software or other materials provided to you will be owned by Primary Licensor, and you hereby agree to assign any such rights to Primary Licensor. Nothing in this Agreement or the applicable License Order Form will preclude Primary Licensor from using in any manner or for any purpose it deems necessary, the know-how,

techniques, or procedures acquired or used by Primary Licensor or Licensor in the performance of any services hereunder.

6.8. Return of Confidential Information. Upon the written request of disclosing party, receiving party shall return or destroy (and certify such destruction in a signed writing) all Confidential Information of disclosing party, including all copies thereof and materials incorporating such Confidential Information, whether in physical or electronic form. Each party may retain a copy of the other party's Confidential Information solely for archival purposes. To the extent that it is impracticable to return or destroy any Confidential Information, and with respect to any copies retained for archival purposes, receiving party shall continue to maintain the Confidential Information in accordance with this Agreement. The confidentiality obligations set forth in this Agreement will survive the termination of this Agreement and remain in full force and effect until such Confidential Information, through no act or omission of receiving party, ceases to be Confidential Information as defined hereunder.

7. LIMITED WARRANTY

7.1. Software Warranty. Licensor warrants that for a period of ninety (90) days from the applicable License Order Form Effective Date (the "**Warranty Period**"), the Software will materially conform to the functional specifications set forth in the Documentation (the "**Specifications**"). Should the Software fail to materially conform to such Specifications during the Warranty Period, you shall promptly notify Licensor in writing on or before the last day of the Warranty Period and identify with specificity the nonconformance. To the extent that the nonconformance exists in a current, unaltered release of the Software, Licensor shall, at its option (and cost and expense), either (i) correct the nonconformance or, (ii) replace the nonconforming Software or, (iii) if neither of the foregoing options is commercially reasonable, terminate the license for the Software. Upon such termination of the license and your return of the Software pursuant to Section 10 below, Licensor will refund to you, as your sole remedy for such Software, all license fees paid by you for such Software.

7.2. Authorized Representative. You and

Licensor warrant that each has the right to enter into this Agreement and that the Agreement and all License Order Forms executed hereunder will be executed by an authorized representative of each entity.

7.3. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, DOCUMENTATION, CONFIDENTIAL INFORMATION AND ANY OTHER TECHNOLOGY OR MATERIALS PROVIDED BY LICENSOR TO YOU ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. EXCEPT AS OTHERWISE STATED IN THIS LICENSE AGREEMENT, LICENSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

7.4. No Modifications. Notwithstanding anything to the contrary in this Section 7, any and all warranties under this Agreement are void if you have made changes to the Software or has permitted any changes to be made other than by or with the express, written approval.

8. INFRINGEMENT

8.1. Indemnity. Licensor will defend at its expense any cause of action brought against you, to the extent that such cause of action is based on a claim that the Software, as delivered by Licensor to you, infringes a United States patent, copyright, or trade secret of a third party. Licensor will pay those costs and damages finally awarded by a court of final jurisdiction (with no further appeals being possible) against you pursuant to any such claim or paid in settlement of any such claim if such settlement was approved in advance and in writing by Licensor. You may retain its own counsel at your own expense.

8.2. Customer Obligations. Licensor will have no liability under this Section 8 unless:

8.2.1. you notify Licensor in writing immediately after you become aware of a claim or the possibility thereof; and

8.2.2. Licensor has sole control of the

settlement, compromise, negotiation, and defense of any such action; and

8.2.3. you cooperate, in good faith, in the defense of any such legal action.

8.3 **No Liability.** Licensor will have no liability for any claim of infringement based on: (i) Software which has been modified by parties other than Primary Licensor; (ii) your use of the Software in conjunction with data where use with such data gave rise to the infringement claim; (iii) your use of the Software with non-Licensor software or hardware, where use with such other software or hardware gave rise to the infringement claim or (vi) your use of the Software in a manner not consistent with this Agreement.

8.4 **Remedies.** Should the Software become, or in Licensor's opinion is likely to become, the subject of a claim of infringement, Licensor may, at its option: (i) obtain the right for you to continue using the Software; (ii) replace or modify the Software so it is no longer infringing or reduces the likelihood that it will be determined to be infringing; or (iii) if neither of the foregoing options is commercially reasonable, terminate the license for the Software. Upon such termination of the licenses and your return of the Software pursuant to Section 10 below, Licensor will refund to you, as your sole remedy for such license termination, (i) with respect to perpetual licenses, all license fees paid by you for the terminated license, less an amount equal to one-thirty-sixth (1/36th) of the license fees for each month or any portion thereof which has elapsed since the "**Term Start Date**" (as described in the License Order Form) of such terminated license or (ii) with respect to subscription licenses, the subscription fees paid by you for the terminated license for the past twelve(12) months. THIS SECTION 8 STATES THE ENTIRE LIABILITY OF LICENSOR WITH RESPECT TO ANY CLAIM OF INFRINGEMENT REGARDING THE SOFTWARE.

9. LIMITATION OF LIABILITY

9.1. **Liability Cap.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR, LICENSOR'S LICENSORS, LICENSOR AFFILIATES, OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW

ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), ATTORNEYS FEES AND COSTS, OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY YOU FOR THE SOFTWARE OR SERVICES WHICH GAVE RISE TO SUCH DAMAGES DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM.

9.2. **Disclaimer of Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR, LICENSOR'S LICENSORS, LICENSOR AFFILIATES, OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES AND COSTS, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL ARISING HEREUNDER.

9.3. THE FOREGOING LIMITATIONS APPLY EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

10. TERM AND TERMINATION

10.1. **Term.** The term of this Agreement will continue for the license term set forth in the License Order Form (the "**Term**") unless terminated as provided herein.

10.2. **Termination by Licensor.** This Agreement and any license under an applicable License Order Form hereunder may be terminated by Licensor (i) if Licensor is not paid for the use of the Software (ii) by giving prior written notice to you if you fail to perform any material obligation required of you hereunder, and such failure is not cured within thirty (30) days from your receipt of

Licensors' notice to cure such non-performance of material obligation; or (iii) if you file a petition for bankruptcy or insolvency, have an involuntary petition filed against you, commence an action providing for relief under bankruptcy laws, file for the appointment of a receiver, or are adjudicated a bankrupt concern.

10.3. Termination by Customer. This Agreement may be terminated by you by giving prior written notice to Licensor if Licensor fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from Licensor's receipt of your notice to cure such non-performance of material obligation. Such notice will describe, in detail, Licensor's alleged non-performance and will describe, in detail, the steps you believe Licensor must take to remedy such alleged non-performance.

10.4. Termination of Subscriptions. The following Section applies if you have purchased subscription licenses. Upon expiration of the Term set forth in the License Order Form or upon termination of this Agreement or any license hereunder, your rights to the affected Software, Confidential Information, and other Licensor or Primary Licensor materials (collectively "**Materials**") will cease. You shall immediately stop using such Materials and shall return such Materials to Licensor, or destroy all copies thereof (except for the copies retained for archival purposes as described in [Section 6.8](#)). In addition, you shall provide Licensor with written certification signed by an officer of your company, that all copies of the Materials have been returned or destroyed and that no copies have been retained by you. Following termination, any use of the Materials by you will be an infringement and/or misappropriation of Licensor and/or Primary Licensor's proprietary rights in the Materials. Upon termination of this Agreement by you, Licensor will have no further obligation or liability hereunder and all fees due under the Agreement will become due and payable to Licensor immediately upon such termination.

10.5. Other Remedies. Termination of this Agreement or any license created hereunder will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve your obligation to pay all

fees that have accrued or are otherwise owed by you under this Agreement.

11. MISCELLANEOUS

11.1. Import/Export. The Software, its related technology and services, and your use of the Software and its related technology and services are subject to U.S. export control and sanctions laws and regulations, including, but not limited to, the Export Administration Regulations, 15 C.F.R. Parts 730-774 (the "**EAR**"), and sanctions imposed or administered by the Department of the Treasury, Office of Foreign Assets Control ("**OFAC**"), and the Department of State and may be subject to export or import regulations in other countries. You warrant and certify that: (i) You are not a citizen, national, permanent resident of, or incorporated or organized to do business in, and is not under the control of the governments of Cuba, Iran, North Korea, Syria and the Crimea region of Ukraine, or any country to which the United States embargoes goods; (ii) you are eligible under U.S. law to receive exports of the Software, in that it is not included on any list of sanctioned or ineligible parties maintained by the U.S. government, including, but not limited to, OFAC's lists of Specially Designated Nationals and Blocked Persons ("**SDN List**"), U.S. Department of Commerce's Table of Denial Orders, the Entity List, or the Unverified List; (iii) you will not sell, export, re-export, transfer, use, or enable the use of the Software, its related technology and services, or any other items that may be provided by Licensor, directly or indirectly: (a) to or for end-use in or by the countries listed in (i) above or any citizens, nationals or permanent residents of such countries; (b) to or for end-use by any person or entity determined by any U.S. government agency to be ineligible to receive exports, including but not limited to persons and entities designated on the lists described in (ii) above; and (c) to or for end-uses prohibited by U.S. export or sanctions laws and regulations, including, but not limited to, activities involving the proliferation of chemical, biological or nuclear weapons, weapons of mass destruction or the missiles capable of delivering such weapons and their related technology.

11.2. Compliance with Laws. Both parties agree to comply with all applicable laws, regulations, and ordinances relating to such party's

performance under this Agreement.

11.3. **Assignment.** You may not assign this Agreement or transfer any license created hereunder, by operation of law, change of control or otherwise without the prior written consent of Licensor. Any purported assignment of this Agreement, or any license or rights in violation of this Section will be deemed void. Licensor may assign this Agreement, sub-contract or otherwise transfer any right or obligation under this Agreement to a third party without your prior written consent.

11.4. **Survival.** The provisions set forth in Sections 2, 3.3, 3.4, 3.5, 4, 5, 6, 7.3, 7.4, 8.3, 8.4, 9, 10.4, 10.5, and 11 of this Agreement will survive termination or expiration of this Agreement and any applicable license hereunder.

11.5. **Notices.** Any notice required under this Agreement will be given in writing and will be deemed effective upon delivery to the party addressed. All notices will be sent to the applicable address as the parties may designate in writing. Unless otherwise specified, all notices to Licensor will be sent to the attention of the Contracts Manager. Any notice of material breach by you to Licensor hereunder, will include a detailed description of any alleged breach and a description of the steps that you understand must be taken by Licensor to resolve the failure. Licensor shall have thirty (30) days from Licensor's receipt of such notice to complete the cure.

11.6. **Technical Data.** You shall not provide to Licensor any "**Technical Data**" as that term is defined in the International Traffic in Arms Regulations ("**ITAR**") at 22 CFR 120.10. You shall certify that all information provided to Licensor has been reviewed and scrubbed so that all Technical Data and other sensitive information relevant to your ITAR regulated projects has been removed and the information provided is only relevant to bug reports on Licensor products.

11.7. **Force Majeure.** Licensor will not be liable to you for any delay or failure of Licensor to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of Licensor. Such causes will include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, or delays

by you in providing required resources or support or performing any other requirements hereunder.

11.8. **Conflict.** In the event of a conflict between the terms and conditions of this Agreement and a License Order Form, the terms and conditions of this Agreement will prevail over the License Order Form.

11.9. **Restricted Rights.** Use of the Software by or for the United States Government is conditioned upon the United States Government agreeing that the Software is subject to "**Restricted Rights**" as provided under the provisions set forth in FAR 52.227-19. You shall be responsible for ensuring that this provision is included in all agreements with the United States Government and that the Software, when delivered to the United States Government, is correctly marked as required by applicable United States Government regulations governing such Restricted Rights as of such delivery.

11.10. **Privacy.** Obligations with respect to personally identifiable information (if any) will be set forth in a separate written agreement between the parties.

11.11. **Entire Agreement.** This Agreement together with the documents referenced herein constitute the entire agreement between the parties regarding the subject matter hereof and supersedes all proposals and prior discussions and writings between the parties with respect thereto. All terms respecting the subject matter of the Agreement and contained in purchase orders, invoices, acknowledgments, shipping instructions, or other forms exchanged between the parties will be void and of no effect.

11.12. **Modifications.** The parties agree that this Agreement cannot be altered, amended or modified, except by a writing signed by an authorized representative of each party.

11.13. **Non-solicitation.** During the Term of this Agreement and for a period of two (2) years thereafter, you agree not to hire, solicit, nor attempt to solicit the services of any employee or Subcontractor of Licensor without the prior written consent of Licensor. You further agree not to hire, solicit, nor attempt to solicit, the services of any former employee or Subcontractor of Licensor for a period of one (1) year from such former

employee's or Subcontractor's last date of service with Licensor. Violation of this provision will entitle Licensor to liquidated damages against you equal to two hundred percent (200%) of the solicited person's gross annual compensation.

11.14. **Headings.** Headings are for reference purposes only, have no substantive effect, and will not enter into the interpretation hereof.

11.15. **No Waiver.** No failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy.

11.16. **Severability and Reformation.** Each provision of this Agreement is a separately enforceable provision. If any provision of this Agreement is determined to be or becomes unenforceable or illegal, such provision will be reformed to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified by such reformation.

11.17. **Independent Contractor.** Licensor is an independent contractor and nothing in this Agreement will be deemed to make Licensor an agent, employee, partner, or joint venturer of yours. Neither party will have any authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.

11.18. **Governing Law; Venue.** The laws of the State of Texas, USA govern the interpretation of this Agreement, regardless of conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transactions Act (UCITA) are hereby excluded in their entirety from application to this Agreement. The parties agree that the federal and state courts located in Travis County, Texas, USA will have exclusive jurisdiction for any dispute arising under, out of, or relating to this Agreement. Mediation will be held in Austin, Texas, USA.

11.19. **Dispute Resolution.**

11.19.1. Negotiations. Where there is a dispute, controversy, or claim arising under, out of or relating to this Agreement, the aggrieved party shall notify the other party in writing of the nature of such dispute with as much detail as possible about the alleged deficient performance of the

other party. A representative from senior management of each of the parties shall meet in person or communicate by telephone within five (5) business days of the date of the written notification in order to reach an agreement about the nature of the alleged deficiency and the corrective action to be taken by the respective parties.

11.19.2. Mediation. Any dispute, controversy, or claim arising under, out of, or relating to this Agreement and any subsequent amendments of this Agreement, including its formation, validity, binding effect, interpretation, performance, breach, or termination, as well as non-contractual claims, and any claims with respect to the validity of this mediation agreement (hereinafter the "**Dispute**"), shall be submitted to mediation in accordance with the then-current WIPO Mediation Rules. The language to be used in the mediation will be English.

11.19.3. Opportunity to Cure. Notwithstanding anything contained hereunder, you agree and acknowledge that no dispute resolution or litigation will be pursued by you for any breach of this Agreement until and unless Licensor has had an opportunity to cure any alleged breach. You agree to provide Licensor with a detailed description of any alleged failure and a description of the steps that you understand must be taken by Licensor to resolve the failure. Licensor shall have sixty (60) days from Licensor's receipt of your notice to complete the cure.

11.19.4. Injunctive Relief. The parties agree that it will not be inconsistent with their duty to mediate to seek injunctive or other interim relief from a competent court. The parties, in addition to all other available remedies, will each have the right to initiate an action in any court of competent jurisdiction in order to request injunctive or other interim relief with respect to a violation of intellectual property rights or confidentiality obligations. The choice of venue does not prevent a party from seeking injunctive or any interim relief in any appropriate jurisdiction.

11.20. **Country-Specific Terms.** The country-specific provisions described in the Country-Specific Terms Addendum <http://countryspecifictermsaddendum.trilogy.com> replace or supplement the equivalent provisions

above as noted therein where you are located in

one of the countries identified in the Country-Specific Terms Addendum and in any case where the law of the jurisdiction listed in the Country-Specific Terms Addendum gets applied.

11.21. **Third Party Software.** Certain items of software that may be provided to Licensor and distributed by Licensor together with the Software are owned by third parties and/or are subject to “open source” or “free software” licenses (“Third Party Software”). The Third-Party Software is not subject to the terms and conditions in this Agreement. Instead, each item of Third Party

Software is licensed under the terms of the end-user license that accompanies such Third-Party Software. Nothing in this Agreement limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end-user license for the Third-Party Software. If required by any license for particular Third-Party Software, Licensor provides the information to access such Third-Party Software and its accompanying end-user license in the Documentation.

[Signatures on the following page]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the latest date set forth below:

[CUSTOMER NAME]

[RESELLER NAME]

By _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____