Software License Terms and Conditions

These Software License Terms and Conditions (the "License Agreement") apply to and are incorporated by reference into the ordering document (the "Quote") made by and between the Licensor/Service Provider (as identified on the Quote) and the Customer (as identified on the Quote) (either the "Perpetual License Agreement" or the "Subscription Agreement").

This License Agreement sets forth the terms and conditions under which Customer may (i) use Licensor's proprietary software (the Licensed Software/Subscribed Software) that is specifically licensed to Customer pursuant to the Quote; and (ii) use the user documentation that Licensor makes generally available in hard copy or electronic form to its general customer base in conjunction with the licensing of such Applications (the "Documentation").

For purposes of this License Agreement, the term "Software" means the Applications listed in an applicable Quote, the Documentation, and any Updates (as defined in the Maintenance and Support Terms and Conditions incorporated by reference into the Quote).

Customer acknowledges and agrees that it is not relying on any agreement, representation, statement, or warranty (whether or not in writing) made or given prior to the Term Start Date, except as expressly provided herein with respect to the Software provided hereunder or any Maintenance and Support Services under the applicable Quote.

Licensor and Customer hereby agree as follows:

1. LICENSE GRANT AND RIGHT OF USE

1.1. **Perpetual License Grant.** Any Software licensed hereunder shall be licensed pursuant to a separate Quote and shall be so licensed upon full payment of applicable fees hereunder. As specifically stated in the Perpetual License Quote, each such license shall be a perpetual, worldwide, nonexclusive, and nontransferable license to use only the object code version of the Software, solely to perform those functions defined in the Documentation, and subject to all limitations and restrictions contained herein ("Use"). Web access for permitted third parties' Use shall be defined in the applicable Quote if such access is to be permitted under this License Agreement. The Software may only be Used on the hardware and software components, including client machines, servers, and internetworking devices within Customer's internal computer network at Customer's location.

1.2. **Subscription Grant.** Any Software licensed hereunder shall be licensed pursuant to a separate Quote. As specifically stated in the Subscription Quote, each such license shall be a fixed term, worldwide, nonexclusive, royalty free (upon full payment of subscription fees), and nontransferable license to use only the object code version of the Software, solely to perform those functions defined in the Documentation, and subject to all limitations and restrictions contained herein ("Use"). Web access for permitted third parties' Use shall be defined in the applicable Quote if such access is to be permitted under this License Agreement. The Software may only be Used on the hardware and software components, including client machines, servers, and internetworking devices within Customer's internal computer network at Customer's location. The Subscription license shall expire upon expiration of the Term described on the Quote unless and until renewed as per the terms and conditions of renewal set forth in the Quote.

1.3. **License Type.** The license model for the Software is set forth in the Quote (or order form) and described in the Licensing Addendum attached hereto.

1.4. **Authorized Users.** Unless otherwise specifically provided in the Quote, Authorized Users are defined as:

- employees of Customer;

- a non-human operated device, or a process acccessing the Software on behalf of the Customer;

- third party individuals or non-human operated devices, or processes that are accessing the Software: (i) on behalf of Customer; or (ii) are authorized by Customer and who do not compete with Licensor ("Third-Party Users"). Third-Party Users may Use the Software only subject to Section 6, "Confidentiality."

1.5. **Authorized Use.** Authorized Users may access and use the Software in the operating software environment specified in the applicable Quote (or order form); such environment is further described in the Licensing Addendum. Authorized Users shall not (i) access the Software to process, or permit to be processed, the data of any other party; or (ii) access the Software for service bureau or commercial time-sharing use. Unless otherwise expressly permitted in the Quote and subject to Section 1.4 above, Customer shall not permit any subsidiaries, affiliated entities, or third parties to access the Software.

1.6. **Additional Restrictions.** In no event shall Customer 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 shall be deemed Confidential Information subject to the requirements of this License Agreement. Customer may use Licensor's Confidential Information solely in connection with the Software and pursuant to the terms of this License Agreement.

1.7. Forking Prohibition. Customer will not fork any version of, or offer or promote any forked version of, any Software, including without limitation the DNN Platform. "**Forking**" means to bifurcate the source code for a DNNCORP product into a separately maintained source code repository so that development performed on the original code requires manual work to be transferred to the forked software or so that the forked software starts to have features not present in the original software.

1.8. Access to Source Code. Some Customers may receive, upon written request, a copy of the source code of the Software ("**Source Code Version(s)"**). Source Code Version is not available if the support subscription has lapsed or if Customer has not complied with the terms of this Agreement. Source Code Version(s) distributed hereunder may be modified by Customer for use in its environments, but may not be distributed to any third party for any purpose other than a third party providing services to Customer with regards to the Software. Any support services provided by Licensor will be rendered on the non-modified portions of the Software only and Customer acknowledges and agrees that any modification of the Software as a result of access to the Source Code Version may render it impossible for Licensor to provide full support services.

2.   PAYMENT

2.1.   License Fees. Unless otherwise provided in the Quote, Licensor may invoice Customer for all license fees, other fees, and charges due thereunder immediately following the Term Start Date.

2.2.   Payment Due Date. All invoices shall be payable by Customer in United States dollars and payment shall be due thirty (30) days after the invoice date. Notwithstanding any provision to the contrary, any and all payments required to be made hereunder shall be timely made, and no payments to Licensor shall be withheld, delayed, reduced or refunded if Licensor has fully performed its material obligations and its inability to meet any schedule or delivery requirements is caused by Customer's failure to provide certain of its facilities, computer resources, software programs, project management activities, personnel, and business information as are required to perform any of Licensor's obligations hereunder.

2.3.   Purchase Orders. Customer may provide Licensor with a valid purchase order, upon execution of a Quote. Notwithstanding anything to the contrary herein, purchase orders are to be used solely for Customer's accounting purposes and any terms and conditions contained therein shall be deemed null and void with respect to the parties' relationship and this License Agreement. Any such purchase order provided to Licensor shall in no way relieve Customer of any obligation entered into pursuant to this License Agreement including, but not limited to, its obligation to pay Licensor in a timely fashion.

2.4.   Late Payment. Any late payment shall be subject to any costs of collection (including reasonable legal fees) and shall bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or at the maximum rate permitted by law, whichever is less.

2.5.   Taxes. All amounts required to be paid hereunder do not include any amount for taxes or levy (including interest and penalties). Customer shall reimburse Licensor and hold Licensor harmless for all sales, use, VAT, excise, property, or other taxes or levies which Licensor is required to collect or remit to applicable tax authorities. This provision does not apply to Licensor's income or franchise taxes, or any taxes for which Customer is exempt, provided Customer has furnished Licensor with a valid tax exemption certificate.

3.   DELIVERY/VERIFICATION

3.1.   Delivery. Unless otherwise specifically provided in the Quote, Licensor shall deliver to Customer one master copy of the licensed Software (each a "Master Copy") solely for the purpose of allowing Customer to make one copy of the Master Copy for Use by each Authorized User. Customer's right to reproduce the Master Copy shall be limited to the Authorized Reproduction Location, defined as the address for Customer on the applicable Quote. Customer shall assume all responsibility for the quality of the copies made by Customer. For purposes of this License Agreement, delivery shall be deemed complete when Licensor physically delivers, or causes a third party to deliver, a Master Copy to Customer, or makes the Master Copy available to Customer for downloading from Licensor's File Transfer Protocol ("FTP") site and has provided Customer with the appropriate authorization to access the FTP site. Licensor will provide Customer 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 the Customer in this License 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. Customer consents to such activity and agrees 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, Customer may make a reasonable number of copies of the Master Copy solely for archival purposes and backup use in accordance with Customer's standard backup processes in emergency situations.

3.3.   Marking. Customer shall include all 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 Licensor materials provided to Customer, in the content and format contained on the Master Copy and such Licensor materials. Customer shall pay all duplication and distribution costs incurred by Customer 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 Licensor materials

provided to Customer are the property of Licensor or its third party licensors from whom Licensor has obtained marketing rights (the "Third Party Licensors").

3.4. **Records.** Customer shall keep and maintain complete and accurate records of each copy of the Software including any and all pertinent distribution information. If the license is a Named User License, Customer shall, upon Licensor's request, provide reports to Licensor specifying the cumulative total of copies, and all other reasonably pertinent distribution information. All reports shall be delivered to Licensor within thirty (30) days of such request.

3.5. **Verification.** Customer agrees that Licensor may, upon thirty (30) days prior written notice, enter Customer's premises to verify Customer's compliance with the provisions of this License Agreement. Licensor's inspections shall be limited to: (i) one annual inspection (unless Licensor believes that it has just cause for multiple inspections); (ii) Customer's normal business hours; and (iii) those records pertaining to the Software licensed hereunder or other Licensor Confidential Information. Licensor's rights of inspection shall remain in effect through the period ending six (6) months from the termination or expiration of this License Agreement and any applicable license hereunder.

4. FOREIGN NATIONALS AND THIRD PARTIES

4.1. **Foreign Nationals.** Customer acknowledges that Licensor employs foreign nationals, and that these foreign national employees will work, on Licensor's behalf, to perform its obligations and Services hereunder.

4.2. **Third Parties.** Subject to the provisions of Section 6, Licensor shall have the right to use third parties, including offshore entities who employ foreign nationals, as well as employees of Licensor's Affiliates (as defined in Section 6.1) who may also be foreign nationals ("Subcontractors") in performance of Licensor's obligations and Services hereunder and, for purposes of this Agreement any and all references to Licensor or its employees shall be deemed to include such Subcontractors.

4.3 **Technical Data**. Customer 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. Customer shall certify that all information provided to Licensor has been reviewed and scrubbed so that all Technical Data and other sensitive information relevant to Customer's ITAR regulated projects has been removed and the information provided is only relevant to bug reports on Licensor products.

5. OWNERSHIP

5.1. **Reservation of Rights.** By signing the applicable Quote, Customer irrevocably acknowledges that, subject to the licenses granted herein, Customer has no ownership interest in the Software or Licensor Materials provided to Customer. Licensor shall own all right, title, and interest in such Software or Licensor Materials, subject to any limitations associated with intellectual property rights of third parties. Licensor reserves all rights not specifically granted herein.

5.2. **Marks and Publicity.** Licensor and Customer trademarks, trade names, service marks, and logos, whether or not registered ("Marks"), shall be the sole and exclusive property of the respective owning party, which shall own all right, title and interest therein. Licensor may: (i) use the Customer's name and/or logo within product literature, press release(s), social media, and other marketing materials; (ii) quote the Customer's statements in one or more press releases; and/or (iii) make such other use of the Customer's name and/or logo as may be agreed between the parties. Additionally, Licensor may include Customer's name and/or logo within its list of customers for general promotional purposes. Licensor shall comply with Customer's trademark use guidelines as such are communicated to the Licensor in writing and Licensor shall use the Customer's Marks in a manner which is consistent with industry practice. Neither party grants to the other any title, interest or other right in any Marks except as provided in this Section.

6. CONFIDENTIALITY

6.1. **Definition.** All information which is defined as Confidential Information hereunder in tangible form shall be marked as "Confidential" or the like or, if intangible (e.g. visually or orally disclosed), shall be designated as being confidential at the time of disclosure and shall 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 shall include all information and materials disclosed orally or in any other form, regarding Licensor's 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 Licensor's 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 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. Obligations with respect to such information (if any) will be set forth in a separate written agreement between the parties. For the purpose of this entire Section 6, 'Licensor' shall include all its Affiliates. "Affiliate" under this License Agreement shall mean any entity, directly or indirectly, controlled by or under common control with or controlling a party to this License Agreement.

6.2. Confidentiality of Software. The following is deemed 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) Licensor's 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 shall 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 License Agreement shall be construed to convey any title or ownership rights to the Software or other 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 Licensor Confidential Information to the Customer. Nothing in this License Agreement shall be construed to convey any title or ownership rights to Customer's Confidential Information or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest in the Customer Confidential Information to 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 License 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 shall be deemed to include such employees of Affiliates and Subcontractors and Licensor will ensure that its Subcontractors abide by the applicable terms of the License 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 shall 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 Customer regarding the Software or other Licensor materials provided to Customer shall be owned by Licensor, and Customer hereby agrees to assign any such rights to Licensor. Nothing in this License Agreement or the applicable Quote shall preclude Licensor from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by 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 License Agreement. The confidentiality obligations set forth in this License Agreement shall survive the termination of this License 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. WARRANTY

7.1. Software Warranty. Licensor warrants that for a period of ninety (90) days from the applicable Term Start Date (the "Warranty Period"), the Applications will materially conform to the functional specifications set forth in the Documentation (the "Specifications"). Should the Applications fail to materially conform to such Specifications during the Warranty Period, Customer 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 Applications, Licensor shall, at its option (and cost and expense), either (i) correct the nonconformance or, (ii) replace the nonconforming Applications or, (iii) if neither of the foregoing options is commercially reasonable, terminate the license for the Software. Upon such termination of the license and Customer's return of the Software pursuant to Section 10 below, Licensor will refund to Customer, as Customer's sole remedy for such Applications, all license fees paid by Customer for such Applications.

7.2. Authorized Representative. Customer and Licensor warrant that each has the right to enter into this License Agreement and that the License Agreement and all Quotes executed hereunder shall 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, ANY AND ALL SOFTWARE, DOCUMENTATION, CONFIDENTIAL INFORMATION AND ANY OTHER TECHNOLOGY OR MATERIALS PROVIDED BY LICENSOR TO THE CUSTOMER 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 License Agreement are void if Customer has made changes to the Software or has permitted any changes to be made other than by or with the express, written approval of Licensor.

8. INFRINGEMENT

8.1. Indemnity. Licensor will defend at its expense any cause of action brought against Customer, to the extent that such cause of action is based on a claim that the Software, as delivered by Licensor to Customer, 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 Customer 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. Customer may retain its own counsel at Customer's own expense.

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

8.2.1. Customer notifies Licensor in writing immediately after Customer becomes 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. Customer cooperates, in good faith, in the defense of any such legal action.

8.3. No Liability. Licensor shall have no liability for any claim of infringement based on: (i) Software which has been modified by parties other than Licensor; (ii) Customer's use of the Software in conjunction with data where use with such data gave rise to the infringement claim; or (iii) Customer's use of the Software with non-Licensor software or hardware, where use with such other software or hardware gave rise to the infringement claim.

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 Customer 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 Customer's return of the Software pursuant to Section 10 below, Licensor will refund to Customer, as Customer's sole remedy for such license termination, (i) with respect to perpetual licenses, all license fees paid by Customer 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 of such terminated license or (ii) with respect to subscription licenses, the subscription fees paid by Customer 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. LICENSOR'S (AND ITS AFFILIATES, LICENSORS AND AGENTS) LIABILITY ARISING OUT OR RELATED TO THIS LICENSE AGREEMENT WILL NOT EXCEED, IN THE AGGREGATE, THE FEE ACTUALLY PAID TO LICENSOR FOR THE SOFTWARE LICENSE/SUBSCRIPTION FEE UNDER A QUOTE THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM.

9.2. DISCLAIMER OF DAMAGES. IN NO EVENT WILL LICENSOR (OR ITS AFFILIATES, LICENSORS OR AGENTS) BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES OR ANY LOSS OF REVENUE, GOODWILL, PROFITS, DATA OR DATA USE ARISING OUT OR RELATED TO THIS LICENSE AGREEMENT.

9.3. THE LIABILITIES LIMITED BY SECTIONS 9.1 AND 9.2 APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE; (iii) EVEN IF LICENSOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; (iv) ATTORNEYS FEES AND COSTS, AND (v) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. IF APPLICABLE LAW LIMITS THE APPLICATION OF THIS SECTION 9, LICENSOR'S (AND ITS AFFILIATES, LICENSORS AND AGENTS) LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.

10. TERM AND TERMINATION

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

10.2. **Termination by Licensor.** This License Agreement and any license under an applicable Quote hereunder may be terminated by Licensor: (i) if Customer fails to make any payments due hereunder within fifteen (15) days after Licensor delivers notice of default to Customer; (ii) by giving prior written notice to Customer if Customer fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from Customer's receipt of Licensor's notice to cure such non-performance of material obligation; or (iii) if Customer files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern.

10.3. **Termination by Customer.** This License Agreement may be terminated by Customer 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 Customer's notice to cure such non-performance of material obligation. Such notice shall describe, in detail, Licensor's alleged non-performance and shall describe, in detail, the steps Customer believes Licensor must take to remedy such alleged non-performance.

10.4. **Termination of Perpetual Licenses.** Upon termination of this License Agreement or any license hereunder, Customer's rights to the affected Software, Licensor Confidential Information and other Licensor materials (collectively "Materials") shall cease. Customer shall immediately stop using such Materials and shall return such Materials to Licensor, or destroy all copies thereof. In addition, Customer shall provide Licensor with written certification signed by an officer of Customer, that all copies of the Materials have been returned or destroyed and that no copies have been retained by Customer for any purpose whatsoever. Following termination, any use of the Materials by Customer shall be an infringement and/or misappropriation of Licensor's proprietary rights in the Materials. Upon termination of this License Agreement by Customer, Licensor shall have no further obligation or liability hereunder and all fees due under the License Agreement shall become due and payable to Licensor immediately upon such termination.

10.5. **Termination of Subscriptions.** Upon expiration of the Term set forth in the Quote or upon termination of this License Agreement or any license hereunder, Customer's rights to the affected Software, Licensor Confidential Information, and other Licensor materials (collectively "Materials") shall cease. Customer shall immediately stop using such Materials and shall return such Materials to Licensor, or destroy all copies thereof. In addition, Customer shall provide Licensor with written certification signed by an officer of Customer, that all copies of the Materials have been returned or destroyed and that no copies have been retained by Customer for any purpose whatsoever. Following termination, any use of the Materials by Customer shall be an infringement and/or misappropriation of Licensor's proprietary rights in the Materials. Upon termination of this License Agreement by Customer, Licensor shall have no further obligation or liability hereunder and all fees due under the License Agreement shall become due and payable to Licensor immediately upon such termination.

10.6. **Other Remedies.** Termination of this License Agreement or any license created hereunder shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under this License Agreement including, but not limited to, any Quote. .

11. CUSTOMER'S FACILITIES

To the extent required by Licensor, Customer will, upon request, promptly make available to Licensor certain of its facilities, computer resources, software programs, networks, personnel, and business information as are required to perform any obligation hereunder. Licensor agrees to comply with Customer's rules and regulations regarding safety, security, and conduct, provided Licensor has been made aware of such rules and regulations in writing.

12. MISCELLANEOUS

12.1. **Import/Export.** The Software, its related technology and services, and Customer's 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. Customer warrants and certifies that: (i) Customer is 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 Iran, North Korea, Sudan or Syria, or any country to which the United States embargoes goods; (ii) Customer is 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) Customer 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.

12.2. **Compliance with Laws.** Both parties agree to comply with all applicable laws, regulations, and ordinances relating to such party's performance under this License Agreement.

12.3. Assignment. Customer may not assign this License Agreement or otherwise transfer any license created hereunder whether by operation of law, change of control, or in any other manner, without the prior written consent of Licensor. Any purported assignment of this License Agreement, or any license or rights in violation of this Section will be deemed void. The Licensor may assign, in whole or in part, its rights, interests, and obligations hereunder without limitation.

12.4. Survival. The provisions set forth in Sections 2, 3.3, 3.4, 3.5, 5, 6, 7.4, 9, 10.4, 10.5, and 12 of this License Agreement shall survive termination or expiration of this License Agreement and any applicable license hereunder.

12.5. Notices. All notices under this License Agreement will be in writing and will be considered given as of twenty-four (24) hours after sending by electronic means (such as fax or e-mail as duly provided by the authorized representatives of either party for such purpose) or by overnight air courier service, or upon delivery to the party to whom addressed after deposit in the mail (certified, return receipt requested) to the addresses mentioned on the Quote.

12.6. Force Majeure. Licensor shall not be liable to Customer 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 shall include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, or delays by Customer in providing required resources or support or performing any other requirements hereunder.

12.7. Conflict. In the event of a conflict between the terms and conditions of this License Agreement and a Quote, the terms and conditions of the Quote will prevail over the License Agreement.

12.8. Restricted Rights. Use of the Software by or for the United States Government is conditioned upon the Government agreeing that the Software is subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. Customer 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 Government, is correctly marked as required by applicable Government regulations governing such Restricted Rights as of such delivery.

12.9. Entire Agreement. This License Agreement together with the Quote and the Maintenance and Support Terms and Conditions constitutes 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 License Agreement and contained in purchase orders, invoices, acknowledgments, shipping instructions, or other forms exchanged between the parties shall be void and of no effect.

12.10. Modifications. The parties agree that this License Agreement cannot be altered, amended or modified, except by a writing signed by an authorized representative of each party. Notwithstanding the foregoing, Licensor may change this License Agreement from time to time by posting such amended License Agreement to Licensor's site, but will provide sixty (60) days advance notice to Customer before materially reducing the benefits offered to Customer under this License Agreement.

12.11. Nonsolicitation. During the term of this License Agreement and for a period of two (2) years thereafter, Customer agrees not to hire, solicit, nor attempt to solicit the services of any employee or Subcontractor of Licensor without the prior written consent of Licensor. Customer further agrees 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 shall entitle Licensor to liquidated damages against Customer equal to two hundred percent (200%) of the solicited person's gross annual compensation.

12.12. Headings. Headings are for reference purposes only, have no substantive effect, and shall not enter into the interpretation hereof.

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

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

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

12.16. Governing Law; Venue. The laws of the State of Texas, USA govern the interpretation of this License 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 License 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 License Agreement. Mediation will be held in Austin, Texas, USA.

12.17. Dispute Resolution.

- **Negotiations**. Where there is a dispute, controversy, or claim arising under, out of or relating to this License 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 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 deficiency and the corrective action to be taken by the respective parties.

- **Mediation**. Any dispute, controversy, or claim arising under, out of, or relating to this License Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The language to be used in the mediation will be English.

- **Opportunity to Cure**. Notwithstanding anything contained hereunder, Customer agrees and acknowledges that no dispute resolution or litigation shall be pursued by Customer for any breach of this License Agreement until and unless Licensor has had an opportunity to cure any alleged breach. Customer agrees to provide Licensor with a detailed description of any alleged failure and a description of the steps that Customer understands must be taken by Licensor to resolve the failure. Licensor shall have thirty (30) days from Licensor's receipt of Customer's notice to complete the cure.

- **Injunctive Relief**. The choice of venue does not prevent a party from seeking injunctive relief in any appropriate jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations. For clarity, the parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief as necessary, without breach of this Section and without abridgment of the powers of the mediator.

Licensing Addendum

The following licensing terms and conditions apply to the Quote entered into by and between the Customer (as identified on the Quote) and the Licensor (as identified on the Quote) (the "Perpetual License Agreement" or the "Subscription Agreement"). Capitalized terms used but not defined in this Addendum have the meanings assigned to them elsewhere in the Perpetual License Agreement or the Subscription Agreement.

1. Definitions. The following terms have the meanings given to them below.

"Disaster Recovery" means a software license acquired and deployed for internal purposes to be used as part of a Customer business contingency plan when essential systems are not available for a period long enough to have a significant impact on the business.

"Instance" means a discrete copy of the Software, as defined on or paired with an underlying web server site instance (e.g. Microsoft Internet Information Services – IIS, Apache, etc.), written to and operating with its own discrete and dedicated system memory. each Instance can be used for one root domain only (i.e. the domain name registered together with a TLD extension). However each root domain can have up to five subdomains (i.e. the third level domain name that is paired with the root domain). Customer can have unlimited subfolders within the instance restriction and can redirect an unlimited amount of sites to domains within the instance restriction.

"Non-Production" means a Software license acquired and deployed for internal purposes to be used in the following environments: development, system testing, integration testing, user acceptance testing, performance testing, staging, quality assurance, or pre- and post-production. If Customer obtained a Non-Production Software license, then such licenses may never be used in a Production (as defined below) environment.

"Production" means a Software license acquired and deployed for internal purposes to be used in a live usage environment for operational business and/or revenue generating purposes.

"Production Backup" means a Software license acquired and deployed for internal purposes to be used in a manner that makes it ready and available to be moved into Production at any time and includes: Disaster Recovery, Continuous Availability Architecture® ("CAA"), high-availability, and hot-standby, warm-standby, or cold-standby.

"Software" means the applications listed in an applicable Quote, the user documentation, and any updates.

2. License Models. Unless otherwise stated in the Quote (or order form), the license models for the Software are as follows (each a "**License Unit**"):

2.1. If the Software is **Evoq Basic**, **Evoq Content** or **Evoq Engage**, then the Software is licensed on a per Instant basis, where the number of active Instances cannot exceed the number of licenses purchased by the Customer;

2.2. if the Software is provided for evaluation purposes ("Evaluation Software"), then the Software may be used by Customer solely for evaluation of the Software applications, and not in conjunction with the development or deployment of such Software applications. Evaluation includes the use of the Software in performance benchmarking. Licensor updates the Software regularly and benchmarking data for the Software is subject to change. Benchmark tests on prior versions of the Software may yield results that are not reflective of the performance of the current version of the Software. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE EVALUATION SOFTWARE CONTAINS A DISABLING DEVICE THAT WILL AUTOMATICALLY DISABLE THE EVALUATION SOFTWARE THIRTY (30) CALENDAR DAYS FROM INSTALLATION OR AS OTHERWISE AGREED IN WRITING BY THE PARTIES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EVALUATION SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSOR MAKES NO WARRANTIES WITH RESPECT TO THE EVALUATION SOFTWARE, EXPRESS, IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE OR NONINFRINGEMENT.

3.   License Environment. Unless otherwise stated in the Quote (or order form), the Software is licensed according to the following environments:

- **Production and Production Backup.** The sum of License Units for Production and Production Backup must not exceed the maximum number of License Units set forth in the Quote.

- **Non-Production.** If Customer ordered or obtained the Software for Non-Production use, then the Software is subject to the additional restriction that it may not be deployed for Production or Production Backup Use. The number of License Units for Non-Production is unlimited provided that: (i) Customer has purchased the Software on a subscription license basis, or (ii) Customer has purchased Production and Production Backup Software licenses and such licenses are not terminated pursuant to the Perpetual License Agreement or the Subscription Agreement.

If no license environment is stated in the Quote (or order form) then the Software is licensed for Production and Production Backup.

4.   Third-Party Components. The Software may contain or be accompanied by certain freeware, open source, or other third-party components, which, if included, are provided pursuant to the terms of the applicable license govern its use. CONSEQUENTLY, LICENSOR'S PROVISION OF THIRD-PARTY COMPONENTS TO CUSTOMER IS ON "AS IS" BASIS WITHOUT WARRANTY FROM LICENSOR OF ANY KIND. LICENSOR HEREBY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (i) ALL WARRANTIES AND INDEMNITIES WITH RESPECT TO THE THIRD-PARTY COMPONENTS, EXPRESS OR IMPLIED, AND (ii) ALL LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, COVER, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST DATA OR LOST PROFITS, HOWEVER ARISING, WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, EVEN WHERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. These components, if any, may be identified in, and subject to, special license terms and conditions set forth in the "notices.txt" file accompanying the Software ("Special Notices"). The Special Notices include important licensing and warranty information and disclaimers. In the event of a conflict between the Special Notices and the other portions of the Perpetual License Agreement or the Subscription Agreement, the Special Notices will take precedence, but solely with respect to the third-party component(s) to which the Special Notice relates.

Updated: May 16, 2018.