

## SOFTWARE LICENSE AGREEMENT

This Software License Agreement (this “**Agreement**”) is by and between AdvanceWare, Inc., an Arizona corporation with offices located at 4815 E. Carefree Hwy #108-266 Cave Creek, AZ 85331 (“**Licensor**”) and you, as representative of the business entity licensing the Software (defined in Section 1) (“**Licensee**”). Licensor and Licensee may be referred to herein collectively as the “**Parties**” or individually as a “**Party**”.

THIS AGREEMENT TAKES EFFECT WHEN YOU CLICK THE “I AGREE” BUTTON OR BY ACCESSING OR USING THE SOFTWARE (the “**Effective Date**”). BY CLICKING ON THE “I AGREE” BUTTON OR BY ACCESSING OR USING THE SOFTWARE YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND, IF ENTERING INTO THIS AGREEMENT FOR AN ORGANIZATION, THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS.

### RECITALS

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

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

### AGREEMENT

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

1. Definitions. Capitalized words not otherwise defined in this Agreement shall have the following meanings ascribed in this Section 1:

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

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

“**Authorized User**” means each of the individuals authorized to use the Software by Licensee and approved by Licensor.

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

“**Documentation**” means Licensor’s user manuals, handbooks, and installation guides, whether digital or printed, relating to the Software/end user documentation relating to the Software made available to Licensee’s Authorized Users which describe the functionality, components, features,

or requirements of the Software, including any aspect of the installation, configuration, integration, operation, or use of the Software.

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

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

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

**“Maintenance Release”** means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Licensor may provide to Licensee from time to time during the Term (defined in [Section 12.2](#)), which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software, but does not include any New Version.

**“New Version”** means any new version of the Software that Licensor may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Licensor’s designation of a new version number), and which Licensor may make available to Licensee at an additional cost under a separate written agreement.

**“Permitted Use”** means use of the Software by an Authorized User for the benefit of Licensee in the ordinary course of its internal business operations pursuant to the MOU (defined in [Section 2.1](#)).

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

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

**“Software”** means the executable, object code version of the design software and any Maintenance Releases provided to Licensee pursuant to this Agreement.

**“Third-Party Materials”** means materials and information, in any form or medium, that are not proprietary to Licensor, including any third-party: (a) documents, data, content or specifications; (b) software, hardware or other products, facilities, equipment or devices; and (c) accessories, components, parts or features of any of the foregoing.

## 2. [License](#).

2.1 License Grant. Subject to and conditioned on Licensee's payment of Fees (defined in Section 6.1) and compliance with all other terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-sublicensable, and non-transferable (except in compliance with Section 13.8) license to use the Software and Documentation solely for the Permitted Use during the Term in accordance with the Memorandum of Understanding (the "**MOU**") executed by Licensee and incorporated herein by this reference. After completing an initial training session with Licensor, Licensee may download the Software using the download link furnished to Licensee in the initial invoice sent by Licensor to Licensee.

2.2 Concurrent User Licensing and Use. Licensee may install the Software on an unlimited number of computer(s) and request an unlimited number of Authorized User accounts; however, Licensee's use of the Software is restricted to one (1) Authorized User on one (1) computer at a time. Licensee shall provide written notice to Licensor of the name and email address of each new Authorized User and of any individuals who are no longer Authorized Users, promptly on adding, removing, or replacing any Authorized User. The total number of Authorized Users shall not exceed the number set forth under this Agreement, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the license fees payable hereunder.

2.3 Security Measures. The Software may contain technological measures designed to prevent unauthorized or illegal use of the Software. Licensee acknowledges and agrees that: (a) Licensor may use these and other lawful measures to verify Licensee's compliance with the terms of this Agreement and enforce Licensor's rights, including all Intellectual Property Rights, in and to the Software; (b) Licensor may deny any individual access to and/or use of the Software if Licensor, in its sole discretion, believes that person's use of the Software would violate any provision of this Agreement, regardless of whether Licensee designated that person as an Authorized User; and (c) Licensor and its Representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Licensee's computers, systems and software, that Licensor may gather periodically to improve the performance of the Software or develop Maintenance Releases. This information will be treated in accordance with Licensor's privacy policy, as amended from time to time, which can be viewed at: [<https://advanceware.com/company/legal-items.html>] or a successor website address (the "**Privacy Policy**").

3. License Restrictions. Except as this Agreement expressly permits, Licensee shall not, and shall not permit any other Person to:

- (a) copy the Software, in whole or in part;
- (b) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improve the Software;
- (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software to any third-party;
- (d) reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;
- (e) bypass or breach any security device or protection used for or contained in the Software or Documentation;

(f) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy of the Software or Documentation;

(g) use the Software in any manner or for any purpose that infringes any Intellectual Property Right or other right of any Person, or that violates any applicable Law;

(h) use the Software for purposes of: (i) benchmarking or competitive analysis of the Software; (ii) developing, using, or providing a competing software product or service; or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage;

(i) use the Software in or in connection with the design, construction, maintenance, operation, or use of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Software could lead to personal injury or severe physical or property damage; or

(j) use the Software or Documentation other than for the Permitted Use or in any manner or for any purpose or application not expressly permitted by this Agreement.

4. **Beta Testing.** Licensor may, at its sole discretion, offer Licensee the opportunity to participate in a beta testing program for the purpose of testing and providing feedback on pre-release versions of the software (the "**Beta Software**"). Participation in such beta testing is voluntary and subject to the terms of this Agreement in addition to any additional terms that may accompany the Beta Software. Licensee acknowledges and agrees that:

(a) The Beta Software is experimental and has not been fully tested. It may contain bugs, errors, or other issues that could cause system failures, data loss, and inaccurate designs and orders. Beta testers are responsible for ensuring orders are accurate before submission to the manufacturer. Licensee understands and agrees that neither the manufacturer nor Licensor are responsible for any design or order inaccuracies and that any costs associated with correcting any such inaccuracies shall be borne by Licensee.

(b) Licensee will provide timely feedback regarding your experience with the Beta Software including reporting any bugs, errors, or other issues you encounter, as well as any suggestions for improvements.

(c) Any information you provide about the Beta Software, including its features and performance, is confidential, and you agree not to disclose such information to any third party without the prior written consent of Licensor.

(d) Licensor makes no warranties of any kind with respect to the Beta Software and disclaims all liability for any damages or lost profits that may arise from or be caused by its use.

(e) Licensor reserves the right to modify, suspend, or discontinue the beta testing program at any time without notice or liability to Licensee.

Licensee's participation in the beta testing program does not grant Licensee any rights to the final release version of the software, nor does it obligate Licensor to provide Licensee with such a version. Licensee's use of the Beta Software is subject to all the terms and conditions of this Agreement as if the Beta Software is the Software licensed hereunder.

5. Maintenance Releases. During the Term, Licensor will provide Licensee with all Maintenance Releases (including updated Documentation) that Licensor may, in its sole discretion, make generally available to its licensees at no additional charge. All Maintenance Releases provided by Licensor to Licensee are deemed Software. Licensee will install all Maintenance Releases as soon as practicable after receipt. For so long as Licensee has paid the Fees, Licensee will be granted access to any New Versions of the Software that Licensor may, in its sole discretion, release from time to time.

6. Fees and Payment.

6.1 License Fees. Licensee shall pay Licensor the license fees set forth in the MOU executed by Licensee (the “Fees”). When this Agreement is renewed at the end of the then-current Term (defined in Section 12.2) pursuant to Section 12.2, Licensee shall pay the then-current standard license fees that Licensee charges for the Software during the applicable Renewal Term (defined in Section 12.2). Notwithstanding the foregoing, the professional service fees outlined in the MOU may be increased by Licensor at any time during the Term by written notice to Licensee.

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

6.3 Payment. Licensee shall pay the Fees due and owing under this Agreement on or before the payment due date set forth in the MOU and applicable invoice received from Licensor. Licensee shall make all payments hereunder in US dollars by check to Licensor or through the online payment link made available to Licensee in the invoice. In the event Licensor permits Licensee to pay the Fees on a monthly basis, Licensee acknowledges and agrees that each monthly credit card payment (if applicable) will be subject to a three percent (3%) surcharge, which will automatically be added to the Fees upon processing of Licensee’s payment.

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

(a) Licensor may charge interest on the past due amount at the rate of one and a half percent (1.5%) per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

(b) Licensee shall reimburse Licensor for all costs incurred by Licensor in collecting any late payment of amounts due or related interest, including attorneys’ fees, court costs, and collection agency fees; and

(c) if such failure continues for five (5) calendar days following written notice thereof, Licensor may: (i) disable Licensee’s use of the Software (including by means of disabling code or technology) anytime thereafter; (ii) withhold, suspend or revoke its grant of a license hereunder; and/or (iii) terminate this Agreement pursuant to Section 12.3, as applicable.

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

## 7. Confidentiality.

7.1 Confidential Information. In connection with this Agreement, each Party (the “**Disclosing Party**”) may disclose or make available Confidential Information to the other Party (the “**Receiving Party**”). Subject to Section 7.2, “**Confidential Information**” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary or is the non-public information of a third-party which Disclosing Party is obligated to protect as confidential (each, a “**Business Partner**”), including information consisting of or relating to the Disclosing Party’s or a Business Partner’s technology, trade secrets, know-how, business operations, plans, strategies, customers, discounts, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated, or otherwise identified as “confidential.”

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

7.3 Protection of Confidential Information. The Receiving Party shall for two (2) years from the date of disclosure: (a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (b) not use the Disclosing Party’s Confidential Information or permit it to be accessed or used: (i) for any purpose other than the Permitted Use or any related transactions between the Parties; or (ii) to the Disclosing Party’s detriment; (c) not disclose any such Confidential Information to any third-party except to the Receiving Party’s Representatives who: (i) need to know the Confidential Information to assist the Receiving Party, or act on its behalf, in relation to the Permitted Use or to exercise its rights under the Agreement, (ii) are informed by the Receiving Party of the Confidential Information’s confidential nature, and (iii) are subject to confidentiality duties or obligations to the Receiving Party that are no less restrictive than the terms and conditions of this Agreement; and (d) be responsible for any breach of this Agreement caused by any of its Representatives.

7.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party will: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 7.3; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 7.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party will disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

## 8. Intellectual Property Rights.

8.1 Intellectual Property Ownership. Licensee acknowledges and agrees that:

(a) the Software and Documentation are licensed, not sold, to Licensee by Licensor and Licensee does not have under or in connection with this Agreement any ownership interest in the Software or Documentation, or in any related Intellectual Property Rights;

(b) Licensor is the sole and exclusive owner of all right, title, and interest in and to the Software and Documentation, including all Intellectual Property Rights relating thereto, subject only to the limited license granted to Licensee under this Agreement; and

(c) Licensee hereby unconditionally and irrevocably assigns to Licensor its entire right, title, and interest in and to any Intellectual Property Rights that Licensee may now or hereafter have in or relating to the Software or Documentation (including any rights in derivative works or patent improvements relating to either of them), whether held or acquired by operation of law, contract, assignment or otherwise.

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

(a) take all commercially reasonable measures to safeguard the Software and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access;

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

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

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

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

8.4 Vendor Files. The downloadable files provided for use with the Software include manufacturer- and vendor-provided files (collectively, the "**Vendor Files**") available at no cost from the manufacturer or vendor. Licensor has made the Vendor Files available as a convenience for our clients, including Vendor Files that Licensor has modified to work better within our systems and programs. Licensor does not make any claims to ownership over the Vendor Files, provides all files

“as-is” and for the limited purposes of use within the Software, and Licensor shall not be liable for any unauthorized or illegal use of any files by Licensee.

## 9. Representations and Warranties.

9.1 Mutual Representations and Warranties. Each Party represents, warrants, and covenants to the other Party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, and authorizations it grants and is required to grant under this Agreement; (c) the execution of this Agreement by its authorized Representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

9.2 No Warranty. LICENSOR PROVIDES THE SOFTWARE AND DOCUMENTATION “AS IS” AND MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LICENSOR HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT.

## 10. Indemnification.

10.1 Licensor Indemnification. Licensor shall indemnify, defend, and hold harmless Licensee from and against any and all Losses incurred by Licensee resulting from any Action by a third-party that the Software or Documentation, or any use of the Software or Documentation in accordance with this Agreement, infringes or misappropriates such third-party’s Intellectual Property Rights. This Section 10.1 does not apply to the extent that the alleged infringement arises from: (a) Third-Party Materials; (b) combination, operation, or use of the Software in or with, any technology (including any software, hardware, firmware, system, or network) or service not provided by Licensor or specified for Licensee’s use in the Documentation; (c) modification of the Software other than: (i) by Licensor or its contractor in connection with this Agreement; or (ii) with Licensor’s express written authorization and in strict accordance with Licensor’s written directions and specifications; (d) use of any version of the Software other than the most current version or failure to timely implement any Maintenance Release, modification, update, or replacement of the Software made available to Licensee by Licensor; (e) use of the Software after Licensor’s notice to Licensee of such activity’s alleged or actual infringement, misappropriation, or other violation of a third-party’s rights; (f) negligence, abuse, misapplication, or misuse of the Software or Documentation by or on behalf of Licensee, Licensee’s Representatives, or a third-party; (g) use of the Software or Documentation by or on behalf of Licensee that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to Licensor’s instructions; (h) events or circumstances outside of Licensor’s commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or (i) third-party claims or Losses for which Licensee is obligated to indemnify Licensor pursuant to Section 10.2. Licensor is under no obligation to indemnify, defend or hold harmless Licensee from and against any and all Losses arising out of or resulting from the use of the Beta Software pursuant to Section 4.



10.2 Licensee Indemnification. Licensee shall indemnify, defend, and hold harmless Licensor and its Affiliates, and each of its and their respective officers, directors, employees, agents, subcontractors, successors and permitted assigns (each, a “**Licensor Indemnitee**”) from and against any and all Losses incurred by a Licensor Indemnitee resulting from any Action by a third-party:

(a) that any Intellectual Property Rights or other right of any Person, or any Law, is or will be infringed, misappropriated, or otherwise violated by any: (i) use or combination of the Software by or on behalf of Licensee or any of its Representatives with any hardware, software, system, network, service, or other matter whatsoever that is neither provided by Licensor nor authorized by Licensor in this Agreement and the Documentation; and (ii) information, materials, or technology directly or indirectly provided by Licensee or directed by Licensee to be installed, combined, integrated, or used with, as part of, or in connection with the Software or Documentation;

(b) relating to facts that, if true, would constitute a breach by Licensee of any representation, warranty, covenant, or obligation under this Agreement;

(c) relating to negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Licensee or any of its Representatives with respect to the Software or Documentation or otherwise in connection with this Agreement; and

(d) relating to use of the Software or Documentation by or on behalf of Licensee or any of its Representatives that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Licensor’s instructions.

10.3 Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 10.1 or Section 10.2. The Party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other Party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor shall promptly assume control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnitee’s prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee’s failure to perform any obligations under this Section 10.3 will not relieve the Indemnitor of its obligations under this Section 10, except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure.

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

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

(b) modify or replace the Software, in whole or in part, to seek to make the Software non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Software under this Agreement; or

(c) If none of the remedies set forth in the above Section 10.4(a) or Section 10.4(b) is reasonably available to Licensor, Licensor may terminate this Agreement, in its entirety or with respect to the affected part or feature of the Software, effective immediately on written notice to Licensee, in which event: (i) Licensee shall cease all use of the Software and Documentation immediately on receipt of Licensee's notice; and (ii) provided that Licensee fully complies with its post-termination obligations set forth in Section 12.4, Licensor shall promptly refund to Licensee, on a pro rata basis, the share of any license fees prepaid by Licensee for the future portion of the Term that would have remained but for such termination.

10.5 Sole Remedy. THIS SECTION 10 SETS FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE OR DOCUMENTATION OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

11. Limitations of Liability.

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

11.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF LICENSOR AND SERVICE PROVIDERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT IN THE ONE (1) YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR TWO HUNDRED DOLLARS (\$200.00), WHICHEVER IS LESS. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

12. Term and Termination.

12.1 Initial Term. The initial term of this Agreement commences as of the Effective Date and continues in effect for one (1) year from such date unless terminated earlier pursuant to any of the Agreement's express provisions (the "**Initial Term**").

12.2 Renewal Term. This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to any of the Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

12.3 Termination. This Agreement may be terminated at any time:

(a) by Licensor, effective on written notice to Licensee, if Licensee fails to pay any amount when due under this Agreement, where such failure continues more than five (5) days after Licensor's delivery of written notice thereof ("**Payment Failure**");

(b) by Licensor, immediately on written notice to Licensee, if Licensee is paying the Fees monthly and any more than two (2) Payment Failures occur in any calendar year;

(c) by Licensor, effective on written notice to Licensee, if the manufacturer terminates its relationship with Licensor;

(d) by either Party, effective on written notice to the other Party, if the other Party breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach (except for Payment Failure as set forth above);

(e) by Licensor, effective immediately, if Licensee: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property; and

(f) by Licensee, effective on thirty (30) days' advanced written notice to Licensee, subject to payment of all the Fees due and outstanding for the then-current Term, if Licensee pays monthly, or subject to forfeiture of all pre-paid Fees up to and through the end of the then-current Term.

12.4 Effect of Termination or Expiration.

(a) Upon the expiration or earlier termination of this Agreement, all rights, licenses and authorizations granted to Licensee hereunder will immediately terminate and Licensee will (i) immediately cease all use of and other activities with respect to the Software and Documentation; (ii) within ten (10) days deliver to Licensor, or at Licensor's written request destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls, the Software, the Documentation and Licensor's Confidential Information, including all documents, files, and tangible materials (and any partial and complete copies) containing, reflecting, incorporating, or based on any of the foregoing, whether or not modified or merged

into other materials; and (iii) certify to Licensor in a signed written instrument that it has complied with the requirements of this Section 12.4; and

(b) Termination or expiration shall not be deemed effective until all amounts payable by Licensee to Licensor of any kind are paid to Licensor by Licensee.

12.5 Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 1, Section 3 (*License Restrictions*), Section 4 (*Beta Testing*), Section 6 (*Fees and Payment*), Section 7 (*Confidentiality*), Section 8 (*Intellectual Property Rights*), Section 10 (*Indemnification*), Section 11 (*Limitation of Liability*), Section 12.4 (*Effect of Termination*), this Section 12.5 (*Surviving Terms*) and Section 13 (*Miscellaneous*). The portions of the MOU relevant to the surviving provisions in this Agreement as set forth in this Section 12.5 (collectively, the “**Surviving Terms**”) shall also survive to the extent necessary to interpret and enforce the Surviving Terms.

### 13. Miscellaneous.

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

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

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

13.4 Notices. Any notice, request, consent, claim, demand, waiver, or other communication under this Agreement have legal effect only if in writing and addressed to a Party as first set forth above (or to such other address or such other person that such addressee Party may designate from time to time in accordance with this Section 13.4). Notices sent in accordance with this Section 13.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent by or email (with confirmation of transmission), if sent during the addressee’s normal business hours, and on the next Business Day, if sent after the addressee’s normal business hours; and (d) on the third (3rd) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

13.5 Interpretation. For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this

Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits and amendments attached to this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

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

13.7 Entire Agreement. This Agreement, together with its Recitals, the MOU, and the Privacy Policy, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement and the MOU provided by Licensor to Licensee, the terms contained in the MOU shall supersede this Agreement. For clarity purposes, Language not in conflict with the terms of the MOU shall be deemed additional terms and conditions to which Licensee is bound.

13.8 Assignment. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise. Licensor may freely assign this Agreement and any of its obligations or performance hereunder to a successor by way of sale of substantially all of Licensor's assets, merger, or a change of control. Any purported assignment, delegation, or transfer in violation of this Section 13.8 is void. This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors and permitted assigns.

13.9 Export Regulation. The Software may be subject to US export control laws, including the US Export Control Reform Act and its associated regulations. Licensee will not directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any country, jurisdiction or Person to which export, re-export, or release is prohibited by applicable Law. Licensee will comply with all applicable Laws and complete all required undertakings (including obtaining any necessary export license or other governmental approval) prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the US.

13.10 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

13.11 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized Representative of each Party. No waiver by any Party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement

will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

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

13.13 Governing Law; Submission to Jurisdiction. This Agreement is exclusively governed by and construed in accordance with the internal Laws of the state of Arizona without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the Laws of any jurisdiction other than those of the state of Arizona. Any Action arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the state of Arizona in each case located in the city of Phoenix and County of Maricopa, and each Party irrevocably submits to the [exclusive] jurisdiction of such courts in any such Action. Service of process, summons, notice, or other document by mail to such Party's address set forth herein will be effective service of process for any Action brought in any such court.

13.14 Dispute Resolution Mechanism. The Parties shall resolve any dispute, controversy or claim arising out of or related to this Agreement (each, a "**Dispute**") pursuant to this Section 13.14.

(a) Negotiations. A Party shall send written notice to the other Party of any Dispute ("**Dispute Notice**"). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) calendar days after one Party delivers the Dispute Notice to the other Party, either Party may, by written notice to the other Party, submit the Dispute to any mutually agreed mediation service for mediation (the last day of such time period, the "**Escalation to Mediation Date**").

(b) Mediation. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The Parties covenant that they will use commercially reasonable efforts in participating in the mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. The Parties further agree that all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation, arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

(c) Arbitration as Final Resort. If the Parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either Party to agree to enter into mediation, or agree to any settlement proposed by the mediator, within sixty (60) calendar days after the Escalation to Mediation Date, either Party may commence binding arbitration before a single

arbitrator in accordance with the American Arbitration Association (“AAA”) rules. The arbitrator shall be selected by application of the rules of the AAA, or by mutual agreement of the Parties. No Party to this Agreement will challenge the jurisdiction or venue provisions as provided in Section 13.13. Nothing contained herein shall prevent the Party from obtaining an injunction.

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

13.16 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 3, Section 7, Section 8, or Section 10 of this Agreement would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including in a restraining order, an injunction, specific performance, and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

13.17 Attorneys’ Fees. In the event that any Action or administrative proceeding is instituted or commenced by either Party against the other Party arising out of [or related to] this Agreement, the prevailing Party is entitled to recover its reasonable attorneys’ fees and court costs from the non-prevailing Party.

13.18 Counterparts; Electronic Signature. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.