

END USER LICENSE AGREEMENT

By signing or otherwise accepting the Order Form, Customer acknowledges and represents that it has fully read and understood, and agrees to be bound by, the terms of this End User License Agreement (“EULA”) (the Order Form and the EULA shall be referred to collectively as the “**Agreement**”) (the date of such occurrence being the “**Effective Date**”). Customer may use the Software Product (as defined below) subject to the terms below. Each of Company and Customer shall be referred to herein as a “**Party**” and together as “**Parties**”.

1. **Definitions.** The following capitalized terms have the meanings set forth below:

- 1.1 “**Affiliate**” with respect to any entity, means any other entity controlling, controlled by or under common control with such entity, where “control” means direct or indirect ownership or voting control of fifty percent (50%) or more of the equity or voting securities of the entity in question or having the power, by commitment or otherwise, to elect a majority of the Board of Directors (or similar governing body) of the entity in question.
- 1.2 “**Customer Data**” means electronic data and content submitted to the Software Product by Customer and Users in connection with their use of the Software Product (defined below), excluding Analytics Information (defined below).
- 1.3 “**Initial License Term**” means the initial Software Product license period specified in the Order Form.
- 1.4 “**Intellectual Property Rights**” means all patents, patent applications, utility models; patented and unpatented information, materials, and data; author’s rights and copyrights; design rights; trade secrets; database rights; trademarks, trade names, corporate names, company names, trade styles, service marks, certification marks, collective marks, logos, and other source of business identifiers; rights in respect of its Confidential Information, know-how, algorithms; and any registrations and applications for any of the foregoing, whether registered or not, and similar or analogous rights subsisting now or at any time in the future, in any country or territory worldwide.
- 1.5 “**Order Form**” means a written or electronic order form, to/in which this MSA is attached or incorporated via a link, and which is agreed by the Parties. The Order Form shall include the commercial terms, including the License Scope, agreed upon between the Parties.
- 1.6 “**Professional Services**” means any configuration, integration, customization or other services which are not Support Services.
- 1.7 “**License Scope**” means any Software Product usage and/or limitations set forth in the Order Form.
- 1.8 “**Users**” means an employee of Customer authorized to access and use the Software Product.
- 1.9 “**Updates**” means all corrections and updates made available by Company to the Software Product through patch versions which will be made available to Customer at no additional cost. Updates shall not include any options or future products which the Company sells separately. Such Updates may require actions to be taken by Customer, as shall be notified by Company in writing and Customer undertakes to abide by such instruction for the continued use of the Software Product.
- 1.10 “**Upgrades**” means any new module, tool, functionality, feature of the Software Product, enhancements, releases, versions, or other changes to the Software Product which Customer can decide to purchase for a separate fee. Upgrades shall not include any options or future products which the Company sells separately. Such Upgrades may require actions to be taken by Customer, as shall be notified by the Company in writing and Customer undertakes to abide by such

instruction for the continued use of the Software Product.

2. **License.**

- 2.1 **Access Right.** Subject to the terms and conditions of this Agreement, Company hereby grants Customer a limited, worldwide, non-exclusive, non-sublicensable, non-transferable and revocable license to use the Company’s software-as-a-service on an on-premises basis (the “**Software Product**”) during the License Term (defined below), solely for Customer’s internal business purposes (collectively, the “**License**”). Unless otherwise indicated, the term “**License**” also includes any manual or documentation that may be provided or made available to Customer in connection with the operation of the Software Product (“**Documentation**”). Customer may use the Software Product subject to the License Scope, other usage limitations or restrictions specified in this Agreement, and applicable laws and regulations.

2.2 **Implementation.**

- 2.2.1 The Customer shall implement the Software Product and set up the environment in accordance with the applicable Documentation and instructions provided by the Company and the Customer shall be solely responsible for providing all equipment, systems, assets, access, and ancillary goods and services needed to access and use the Software Product and for ensuring their compatibility with the Software Product. The implementation process may include installation, setup, configuration, and data migration.
- 2.2.2 For the avoidance of doubt, it is hereby agreed that the Company is not responsible for the installation, sizing, configuration, performance or other operation of the Software Product unless specifically agreed otherwise between the Parties in a separate SOW.
- 2.3 **Account Setup.** In order to access the Software Product, Customer (or Company on behalf of Customer where applicable) will set up an administrative account, by submitting the information requested in the applicable Software Product interface or to Company (“**Account**”), and each User may need to have set up a user account (each, a “**User Account**”, and references herein to the “**Account**” shall be deemed to include all such User Accounts if applicable). Customer warrants that all information submitted during the registration process is, and will thereafter remain, complete and accurate. Customer shall be responsible and liable for all activities that occur under or in the Account. Customer will require that all Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. Customer shall be fully responsible and liable for any breach of this Agreement by a User. Any unauthorized access to or use of the Software Product must be immediately reported to the Company.
- 2.4 **Additional Purchases.** Purchases of access to additional volume under the License Scope and/or to Upgrades (collectively, “**Additional Purchases**”) shall be documented by a mutually signed written addendum to the Order Form or by executing a new Order Form, in each case according to the pricing agreed between the

Parties. If Customer makes any Additional Purchases during a License Term, the License Fees and the Software Product term therefor will be prorated to be coterminous with the License Term.

- 2.5 **Hosting.** The Software Product is hosted on Customer's on-premise system ("**Hosting**"), and accordingly the availability of the Software Product shall be in accordance with the Hosting's then-current uptime commitments or the Customer's systems. It is hereby clarified that the Company is not responsible for the Hosting and will not be liable for any failures or delays related to the Hosting or for any support with respect to the Hosting.

3. **Hardware.** The Customer is solely responsible for any component and infrastructure needed for the installation and operation of the Software Product in its premises ("**Hardware**") and Company will not be liable for any failures or delays related to the Hardware. THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT WITH RESPECT TO HARDWARE.

4. **Support Services and Professional Services.**

- 3.1 **Support Services.** Company shall provide Customer with technical support and maintenance services ("**Support Services**") in accordance with Company's then current Service Level Agreement as may be amended from time to time (the "**SLA**"). The Support Services may be performed by Company and/or Company's certified third-party providers. The Company shall be responsible for such service providers' performance of the Support Services. The term "**License**" shall include the Support Services provided under the SLA.

- 3.2 **Access to Customer's Systems.** Customer understands that Company's obligations hereunder cannot be met without access to Customer's systems. Customer therefore agrees to provide Company with remote access to Customer's systems and sufficient time and assistance to enable Company to (a) duplicate any reported problem, (b) determine that the problem results from the Software Product, and, (c) after corrective action, determine that the problem has been solved, or a workaround provided. If Customer does not provide such access, Company shall not be liable for any obligations hereunder that cannot be met as a result.

4 **Updates and Upgrades.**

- 4.1 Customer acknowledges and agrees that Company may from time, during the License Term, provide the Customer with Updates and/or Upgrades (as applicable) for the Customer to install. Notwithstanding anything to the contrary, Company is not under any obligation to provide any Updates and/or Upgrades.
- 4.2 Customer is aware that it is its responsibility to install all Updates and/or Upgrades (as applicable) provided by Company and notes that it is aware that Company is not liable in any way or manner with regards to any outdated Software Product, including (i) versions of the Software Product that are more than one version back from the then most current version; or (ii) any Software Products under which Customer has not installed Updates and/or Upgrades (as applicable) provided by Company, and accordingly Company will not support or maintain any outdated Software Product or be liable, warrant or be obliged in any way or manner with regards to or in relation to any outdated Software Product or any damages caused due to use or inability to use such outdated Software Product, to the extent Company has previously provided an Update and/or Upgrade (as

applicable) for such outdated Software Product, that had it been implemented, would have not resulted in such damages or inability to use. It is Customer's responsibility to make use and deploy Updates and/or Upgrades (as applicable) provided by Company.

5. **Fees.**

- 5.1 **License Fees.** Customer shall pay Company the License fees specified in the Order Form (the "**License Fees**").
- 5.2 **General.** Unless expressly stated otherwise in the Order Form: (a) all Fees are stated, and are to be paid, in U.S. Dollars; (b) all payments under this Agreement are non-refundable, and without any right of set-off or cancellation; (c) all Fees are payable, and shall be invoiced, in advance, and shall be paid within thirty (30) days following the date of the applicable invoice; and (d) any amount not paid when due will accrue interest on a daily basis until paid in full, at the lesser of the rate of one and a half percent (1.5%) per month and the highest amount permitted by applicable law.
- 5.3 **Additional Fees.** In the event that the Customer and/or its users (jointly), use the License above the number of Endpoints specified in the Order Form, Company will charge the Customer for additional fees, as specified in the Order Form ("**Other Fees**", and together with the License Fees, the "**Fees**").
- 5.4 **Suspension.** Company reserves the right to temporarily suspend provision of the Software Product: (a) if Customer is seven (7) days or more overdue on a payment; (b) if Company deems such suspension necessary as a result of Customer's breach under Section 6 (*License Restrictions*); (c) if Company reasonably determines suspension is necessary to avoid material harm to Company or its other customers, including if the Software Product's cloud infrastructure is experiencing denial of service attacks or other attacks or disruptions outside of Company's control, (d) if Company, in its sole discretion, believes that Customer has engaged in abusive use, or misuse, of the Software Product or (e) as required by law or at the request of governmental entities.
- 5.5 **Taxes.** Amounts payable under this Agreement are exclusive of all applicable sales, use, consumption, VAT, GST, and other taxes, duties or governmental charges, except for taxes based upon Company's net income. In the event that Customer is required by any law applicable to it to withhold or deduct taxes for any payment under this Agreement, then the amounts due to Company shall be increased by the amount necessary so that Company receives and retains, free from liability for any deduction or withholding, an amount equal to the amount it would have received had Customer not made any such withholding or deduction. If a purchase order (or purchase order number) is required by Customer in order for an invoice to be paid, then Customer shall promptly provide such purchase order (or number) to Company.

6. **License Restrictions.** As a condition to the License, and except as expressly permitted otherwise under this Agreement, Customer shall not do (or permit or encourage to be done) any of the following License restrictions (in whole or in part): (a) copy, "frame" or "mirror" the Software Product; (b) sell, assign, transfer, lease, rent, sublicense, or otherwise distribute or make available the Software Product to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment); (c) publicly perform, display or communicate the Software Product; (d) modify, alter, adapt, arrange, or translate the Software Product; (e) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code or non-literal aspects

(such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, or algorithms) of, the Software Product; (f) remove, alter, or conceal any proprietary rights notices displayed on or in the Software Product; (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Software Product; (h) make a derivative work of the Software Product, or use it to develop any service or product that is the same as, competes with (or substantially similar to) it; (i) store or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Software Product; or (j) take any action that imposes or may impose (as determined in Company's reasonable discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure which operate or support the Software Product, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure (collectively, the "**License Restrictions**").

7. **Personal Data.** "**Personal Data**" means any information that identifies, describes, is reasonably capable of being associated with, or is relating to an identified or identifiable natural person; an identifiable natural person, is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to the physical, physiological, mental, economic, cultural or social identity of that natural person. To the extent that Customer uploads or otherwise shares with Company or the Software Product any information that could be considered Personal Data, Customer further represents and warrants that it has all rights, consents, legal bases and legal grounds to collect, use, process and transfer the Personal Data in the context of the Software Product. Customers will comply with any and all applicable laws (including, without limitation, privacy and employment laws) when accessing and using the Software Product. To the extent that the Customer needs a data processing agreement, Customer shall request Company to provide it with Company's Data Processing Agreement via privacy@jazz.security and return it signed to Company as described therein.

8. **Mutual Warranties.** Each Party represents and warrants that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; and that the execution and performance of this Agreement will not conflict with other agreements to which it is bound or violate applicable law.

9. **Intellectual Property Rights.**

9.1 Software Product. As between the Parties, Company is, and shall be, the sole and exclusive owner of all Intellectual Property Rights in and to: (a) the Software Product and all related software and intellectual property; and (b) any and all improvements, derivative works, and/or modifications of/to the foregoing, regardless of inventorship or authorship. Customer shall make, and hereby irrevocably makes, all assignments necessary or reasonably requested by Company to ensure and/or provide Company with the ownership rights set forth in this paragraph. Nothing herein constitutes a waiver of Company's Intellectual Property Rights under any law.

9.2 **Feedback.** If Company receives any feedback (which may consist of questions, comments, suggestions or the like) regarding any of the Software Product (collectively, "**Feedback**"), all rights, including Intellectual Property Rights in such Feedback shall belong exclusively to Company and such shall be considered Company's Confidential Information. Customer hereby irrevocably and unconditionally

transfers and assigns to Company all Intellectual Property Rights it has in such Feedback and waives any and all moral rights that Customer may have in respect thereto. It is further understood that use of Feedback, if any, may be made by the Company at its sole discretion, and that Company in no way shall be obliged to make use of the Feedback.

9.3 **Analytic Information.** Any anonymous information, derived from the use of the Software Product (i.e., metadata, aggregated and/or analytics information and/or intelligence relating to the operation, support, and/or Customer's use, of the Software Product) which is not Personal Information and does not identify Customer ("**Analytics Information**") may be used by Company to provide the Software Product, for compliance with applicable laws, and for development and/or statistical purposes. Analytics Information is the Company's exclusive property and Confidential Information.

10. **Customer Data.** While using the Software Product, Customer data and information may be made available and/or accessible to Company or the Software Product (the "**Customer Data**"). Customer hereby grants Company and its Affiliates a worldwide, non-exclusive, non-assignable (except as provided herein), non-sublicensable (except to Company's subcontractors, if applicable), non-transferable right and license, to access and use the Customer Data, including without limitation for Company's provision of the Software Product and related services hereunder. As the exclusive owner of the Customer Data, Customer represents, warrants and covenants that to the extent the Customer Data includes any Personal Information, Customer has received and/or obtained any and all required consents or permits and has acted in compliance with any and all applicable laws, including, without limitation privacy laws, as to allow Company to receive, transfer and use the Customer Data solely in order to perform the Software Product. Company may use or disclose the Customer Data: (a) to satisfy any applicable law, regulation, legal process, subpoena or governmental request; and/or (b) to collect, store, transfer, and/or process the Customer Data through Company's Affiliates, third party service providers and vendors, as reasonably necessary to provide the Software Product. The Company will maintain commercially reasonable administrative, technical, and physical safeguards designed to protect the security, confidentiality, and integrity of the Customer Data.

11. **Third Party Components.** The Software Product may use or include third party open source software, files, libraries or components, or other third party software (collectively, "**Third Party SW**"), that may be distributed to Customer and are subject to third party license terms. A list of any Third Party SW and related licenses will be provided by Company upon request. If there is a conflict between any third party license and the terms of this Agreement, then the third party license terms shall prevail, but solely in connection with the related third party software. Company makes no warranty or indemnity hereunder with respect to any third party software.

12. **Confidentiality.** "**Confidential Information**" means any information disclosed by or on behalf of one Party ("**Discloser**") to the other Party ("**Recipient**") pursuant to this Agreement that is marked as "confidential", or in some other manner to indicate its confidential nature. Without limiting the foregoing, the Software Product is Company's Confidential Information. Confidential Information does not include any information which: (i) is or becomes generally known and available to the public through no act of the Recipient; (ii) was already in the Recipient's possession without a duty of confidentiality owed to the Discloser at the

time of the Discloser's disclosure; (iii) is lawfully obtained by the Recipient from a third party who has the express right to make such disclosure; or (iv) is independently developed by the Recipient without breach of an obligation owed to the Discloser. The Recipient may use the Discloser's Confidential Information solely to perform its obligations under this Agreement. Except as set forth in the immediately following sentence, the Recipient will not disclose the Discloser's Confidential Information to any third party except to its employees, consultants, affiliates, agents, and subcontractors having a need to know such information to perform its obligations under this Agreement who have signed a non-disclosure agreement with the Recipient containing terms at least as protective of the Discloser's Confidential Information as those contained herein. The Recipient may disclose the Discloser's Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that it notifies the Discloser of such required disclosure to enable Discloser to seek a protective order or otherwise to prevent or restrict such disclosure. All rights, titles, and interests in and to Confidential Information are and will remain the sole and exclusive property of the Discloser. The Recipient will use no less than commercially reasonable efforts to protect the Discloser's Confidential Information from unauthorized access, use, or disclosure. Notwithstanding anything to the contrary in this Agreement, Company's obligations with respect to the protection of Customer Data are solely as set forth in Section 10 (*Customer Data*).

13. **Disclaimer Of Warranties.** The Company represents and warrants that, under normal, authorized use, the Software Product shall substantially perform in conformance with its Documentation. As Customer's sole and exclusive remedy and Company's sole liability for breach of this warranty, Company shall use commercially reasonable efforts to repair the Software Product. The warranty set forth herein shall not apply if the failure of the Software Product results from or is otherwise attributable to: (i) repair, maintenance or modification of the Software Product by persons other than Company or its authorized contractors; (ii) accident, negligence, abuse or misuse of the Software Product; (iii) use of the Software Product other than in accordance with the Documentation; or (iv) the combination of the Software Product with equipment or software not authorized or provided by Company. OTHER THAN AS EXPLICITLY STATED IN THIS AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE PRODUCT AND THE RESULTS THEREOF ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. COMPANY DOES NOT WARRANT THAT: THE SOFTWARE PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS, OR OPERATE ERROR-FREE. EXCEPT AS SET FORTH IN SECTION 8 (*MUTUAL WARRANTIES*) AND THIS SECTION 13, COMPANY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, SATISFACTORY QUALITY TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SOFTWARE PRODUCT FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO PUBLIC NETWORKS OR CUSTOMER'S HOSTING SERVICES.

14. **AI Features.** Company may involve and/or allow access to and/or use of artificial intelligence tools and/or Features, including, without limitation, features provided by third parties (collectively, "**AI Features**"). AI Features provided by third parties are subject to the applicable third

party's terms. When activating and/or using such AI Features, Customer acknowledges and agrees to comply with the applicable third party's terms, and that Customer Data and personal information may be transferred, processed and/or stored by third parties. Results generated by AI Features are automatically produced (by machine), and may be inaccurate, incorrect, contain non-unique elements or display content similar to that shown to other customers or users. Manual or human review is required. AI Features are provided on an "AS IS" basis, without liability, indemnity or warranty of any kind, whether express or implied, and the use of AI Features is at the Customer's own discretion and sole risk.

15. **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE, PROFITS, REPUTATION OR GOOD WILL, DATA, OR DATA USE, OR THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES. COMPANY'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID OR PAYABLE TO COMPANY BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. FOR CLARITY, THE LIMITATIONS IN THIS SECTION DO NOT APPLY TO PAYMENTS DUE TO THE COMPANY UNDER THIS AGREEMENT (INCLUDING ITS EXHIBITS).

16. **Indemnification.**

16.1 Company agrees to defend, at its expense, any third party action or suit brought against Customer alleging that the Software Product, when used as permitted under this Agreement, infringes Intellectual Property Rights of a third party ("**IP Infringement Claim**"); and Company will pay any damages finally awarded by a court of competent jurisdiction against Customer that are attributable to any such IP Infringement Claim, provided that Customer (i) promptly notifies Company in writing of such claim; and (ii) grants Company the sole authority to handle the defense or settlement of any such claim and provides Company with all reasonable information and assistance in connection therewith, at Company's expense. Company will not be bound by any settlement that Customer enters into without Company's prior written consent.

16.2 If the Software Product becomes, or in Company's opinion is likely to become, the subject of an IP Infringement Claim, then Company may, at its sole discretion: (a) procure for Customer the right to continue using the Software Product; (b) replace or modify the Software Product to avoid the IP Infringement Claim; or (c) if options (a) and (b) cannot be accomplished despite Company's reasonable efforts, then Company may terminate the affected Order Form(s) upon written notice to Customer, and Customer shall be entitled to receive a pro-rated refund of any prepaid License Fees under such Order Form(s) based on the remaining period of the corresponding License Term(s).

16.3 Notwithstanding the foregoing, Company shall have no responsibility for IP Infringement Claims resulting from or based on: (i) Company's compliance with Customer's instructions or specifications; or (ii) the combination or use of the Software Product with

equipment, devices or software not supplied by Company.

16.4 This Section 16 states the Company's entire liability, and Customer's exclusive remedy, for any IP Infringement Claim.

16.5 Customer hereby agrees to defend, indemnify and hold harmless Company and its affiliates and their respective officers, directors, agents and employees from any and all claims, damages, liabilities, costs, and expenses (including attorney's fees) arising from claims related to Customer's use of the Software Product as well as from Customer's failure to comply with this Agreement, except for claims arising from IP Infringement Claim.

17. **Term and Termination.**

17.1 **Term.** This Agreement commences on the Effective Date and, unless terminated in accordance herewith, shall continue in full force and effect for the duration of the Initial License Term (as defined under the Order Form). Unless otherwise specified in the Order Form, following the Initial License Term, the Order Form shall automatically renew for successive 1 year terms (each, a "**Renewal License Term**", and together with the Initial License Term, the "**License Term**"), unless either Party notifies the other Party in writing of its intent not to renew the Order Form at least sixty (60) days prior to the expiration of the then-current License Term.

17.2 **Termination for Breach.** Each Party may terminate this Agreement immediately upon written notice to the other Party if the other Party commits a material breach under this Agreement and, if curable, fails to cure that breach within sixty (60) days after receipt of written notice specifying the material breach (except that for payment defaults, such cure period will be seven (7) days).

17.3 **Termination for Bankruptcy.** Each Party may terminate this Agreement upon written notice to the other Party upon the occurrence of any of the following events in respect of such other Party: (a) a receiver is appointed for the other Party or its property, which appointment is not dismissed within sixty (60) days; (b) the other Party makes a general assignment for the benefit of its creditors; (c) the other Party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief Law, which proceedings are not dismissed within sixty (60) days; or (d) the other Party is liquidating, dissolving or ceasing normal business operations.

17.4 **Effect of Termination; Survival.** Upon termination of this Agreement for any reason: (a) the License shall automatically terminate, (b) Customer shall cease all access and use of the Software Product thereunder, and (c) Customer shall (as directed) permanently erase and/or return the Software Product and all Confidential Information of Company in Customer's possession or control. Following termination, all outstanding Fees and other charges that accrued as of termination, shall become immediately due and payable, and if necessary, Company shall issue a final invoice therefor. The provisions of this Agreement that, by their nature and content, must survive the termination of this Agreement in order to achieve the fundamental purposes of this Agreement (including limitation of liability) shall so survive. Termination shall not affect any rights and obligations accrued as of the effective date of termination.

18. **Miscellaneous.**

18.1 **Entire Agreement.** This Agreement, including the data processing agreement (if applicable), and any exhibits attached or referred hereto, represents the entire

agreement between the Parties concerning the subject matter hereof, replaces all prior and contemporaneous oral or written understandings and statements, and may be amended only by a written agreement executed by both Parties. Any terms and conditions (whether printed, linked to or otherwise), within any purchase order or related correspondence which that purport to modify or supplement the terms and conditions of this Agreement (or the corresponding Order Form), shall be void and of no effect.

18.2 **No Waiver.** The failure of either Party to enforce any rights granted hereunder or to take action against the other Party in the event of any breach, shall not be deemed a waiver by that Party as to subsequent enforcement or actions in the event of future breaches. Any waiver granted hereunder must be in writing.

18.3 **Severity.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and such provision shall be reformed only to the extent necessary to make it enforceable.

18.4 **Government Use.** Any use of the Software Product by an agency, department, or other entity of the United States government shall be governed solely by the terms of this Agreement.

18.5 **Publicity.** Customer hereby agrees that (i) Company may use Customer's name and logo to identify Customer as a customer of Company or user of the Software Product, on Company's web site, presentations, marketing materials or otherwise; and (ii) Customer, to the extent requested by Company, shall use commercially reasonable efforts to positively address communications it receives from Company's potential customers. In addition, Customer will cooperate with Company to create a quote/case study that will be published on the Company website. Following the termination of this Agreement, Customer may request Company to remove such customer reference.

18.6 **No Third Parties.** Except as stated otherwise herein, this Agreement is for the sole benefit of the Parties hereto, and nothing herein, express or implied, shall give, or be construed to give, any rights hereunder to any other person.

18.7 **Assignment.** Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, this Agreement may be assigned by either Party in connection with a merger, consolidation, sale of all of the equity interests of such Party, or a sale of all or substantially all of the assets of the Party to which this Agreement relates. Without derogating from and subject to the abovementioned, this Agreement will bind and benefit each Party and its respective successors and assigns.

18.8 **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the state of Delaware without regard to principles of conflicts of law. All disputes arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the competent court of Delaware, United States; provided, however, that nothing in this Agreement shall prevent a Party from seeking injunctive relief to enforce the terms of this Agreement in any venue or jurisdiction as determined in such Party's sole discretion and convenience.

18.9 **Amendments.** No modifications to this Agreement can

be made except in writing, signed by the Customer and Company.

18.10 No Agency. This Agreement does not, and shall not be construed to, create any relationship, partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between the Parties. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party.

18.11 Force Majeure. Company will not be liable for any delay or failure to provide the Software Product resulting from circumstances or causes beyond the reasonable control of Company, including, but not limited to on account of strikes, shortages, riots, insurrection, fires, flood, storms, explosions, acts of God, war, government or quasi-governmental

authorities actions, riot, acts of terrorism, earthquakes, explosions, power outages, pandemic or epidemic (or similar regional health crisis), or any other cause that is beyond the reasonable control of Company.

18.12 Notices. Notices to either Party shall be deemed given (a) four (4) business days after being mailed by airmail, postage prepaid, (b) the same business day, if dispatched by facsimile or electronic mail before 13:00 hour (local time for the receiving Party) and sender receives acknowledgment of receipt, or (c) the next business day, if dispatched by facsimile or electronic mail after the hour 13:00 (local time for the receiving Party) and sender receives acknowledgment of receipt.

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