

**GENERAL TERMS & CONDITIONS ADDENDUM
TO
RED MOON SOLUTIONS SOFTWARE & SERVICES AGREEMENT**

RECITALS

WHEREAS:

1. Red Moon Solutions, LLC (Licensor) maintains and licenses one or more software programs (the Application(s)), making them available to its customers either by way of delivery of a copy of the Application(s) to the customer for installation and use on the customer's own computer(s) ("**Local-Access**" use) or by hosting the Application(s) itself (or through a contractor) and offering customers access to the hosted Application(s) via Internet connection ("**Hosted-Access**" use);
2. Licensee wishes to license the Application(s) for use in its business, on the terms and conditions set forth in this Agreement and acknowledging it obtains no proprietary rights or interests in the Application(s) (nor in any Updates or other materials provided by Licensor); and
3. Licensee understands this Agreement is used by Licensor for multiple products and service models, and that it therefore contains some terms (and definitions) that might not apply to Licensee or the transaction(s) governed by this Agreement.

NOW, THEREFORE, in consideration of these premises, the mutual promises made in this Agreement and other good and valuable consideration, the parties agree as follows:

Section 1. Definitions

In addition to other capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth below when used and capitalized in this Agreement:

"**Affiliate**" shall mean, as to the applicable party hereto, any entity more-than-50% controlling, controlled by or under common control with that party.

"**Additional Service Year**" shall mean any Service Year subsequent to the Initial Service Year.

"**Anniversary Date**" shall mean the first day of any Service Year subsequent to the Initial Service Year.

"**Application(s)**" shall mean the software program(s) hereby subscribed to by Licensee as indicated in the Order Form.

"**Authorized User(s)**" shall mean employees or other agents of Licensee or its Affiliates (or contractors who have committed in writing to be bound by this Agreement) designated by Licensee to use the Application, as permitted herein, on behalf of Licensee and/or its Affiliates.

"**Documentation**" shall mean any documentation accessed from within the application(s).

"**Effective Date**" shall mean the date indicated as such on the Order Form.

"**Hardware**" shall mean the computer hardware and operating system owned or leased by Local Access Licensees and on which the Application(s) are initially installed for use or, in accordance herewith, are subsequently installed for use.

"**Hosted Access**" shall have the meaning provided for that term in the *Recitals* section above.

"**Hosting Fee**" shall mean the hosting fee, as referenced on the Order Form, charged by Licensor for Hosting Services for a given Service Year.

"**Hosting Services**" shall mean the hosting and related services of Licensor by which it provides Hosted-Access Licensees access to and use of the Application(s) via the Internet.

"**Initial Service Year**" shall mean the period indicated as such on the Order Form.

"**License**" shall mean the rights granted to Licensee pursuant to Section 2 hereof.

"**License Fee**" shall mean the license fee, as referenced on the Order Form, charged by Licensor for Licensee's use of the Application(s) for a given Service Year.

"**Local Access**" shall have the meaning provided for that term in the *Recitals* section above.

"**Location(s)**" shall mean the premises shown on the Order Form where, regarding Local-Access Licensees, the Hardware on which the Application(s) will be installed is located.

"**Order Form**" shall mean the portion of this Agreement identified as *Order Form* and specifying the software programs being subscribed to, certain fees associated with their use, and certain other points of agreement.

"**Party(ies)**" shall mean, depending on context, Licensor, Licensee or both or either.

"**Service Year**" shall mean the Initial Service Year or any other twelve (12) calendar month period beginning on an Anniversary Date and while this Agreement is still in effect and as to which Licensee is entitled hereunder to receive (or receive access to) Updates that Licensor might provide.

"**Service Year Renewal**" shall have the meaning provided for that term in the Order Form.

"**Support**" shall mean technical support services provided by Licensor hereunder to Licensee regarding use of the Applications.

"**Support Fee**" shall mean the support fee, as referenced on the Order Form, charged by Licensor for Licensee's right to receive Support services for a given Service Year.

"**Training Fees**" shall mean the fees charged by Licensor for training regarding the Application(s).

"**Travel Fees**" shall mean reasonable travel-related expenses (e.g., transportation, lodging, meals) incurred by Licensor to provide Licensee installation, training, implementation and/or other services at Licensee's facilities that Licensee has authorized.

"**Updates**" shall mean any new versions, upgrades, releases, corrections, enhancements, modifications, improvements and derivatives of the Application(s) or Documentation provided by Licensor to Licensee pursuant to this Agreement. The terms hereof relating to the Applications and/or Documentation shall also apply to any associated Updates provided by Licensor to Licensee hereunder.

Section 2. License

- (a) So long as this Agreement remains in effect and is not terminated, and subject to the terms hereof, Licensor

hereby grants Licensee the right to use the tax-year version(s) of the Application(s) associated with each Service Year as to which Licensee, in accordance with the terms hereof, duly pays the applicable License Fee(s), Hosting Fee(s), Support Fee(s) and other charges provided for in this Agreement. Permitted use is limited to the processing of Licensee's own work and the work of its Affiliates who agree to be bound by this Agreement, and to use through only that number of Authorized Users shown on the Order Form. Licensee may assign different and varying of its employees as its Authorized Users, but simultaneous use of the Application(s) at any given point in time is at all times limited to use by the number of Authorized Users specified on the Order Form. For Local-Access Licensees, use will be only on the Hardware and only at the Location and Local-Access Licensees shall not install or use the Application(s) on Hardware that, based on technical specifications relating to the Applications and provided by Licensor, would be insufficient or otherwise inappropriate for the Applications. Licensee shall not use or reproduce the Application(s) except as expressly permitted in this Agreement. Any rights not expressly granted herein are reserved by and to Licensor.

- (b) The license granted herein to Licensee is in consideration of the payment of the applicable fees and charges and is subject to the terms set forth in this Agreement.
- (c) The license granted herein to Licensee is non-exclusive and non-transferable (except in accordance with Section 11(i) herein), and nothing contained herein shall be deemed to convey any title, ownership or proprietary right or interest in the Application(s) or in any intellectual property contained therein to Licensee. Licensee shall not knowingly take any action that would adversely affect the proprietary rights in the Application(s), including, without limitation, any patent, copyright, trademark and trade secret rights therein.
- (d) Local-Access Licensees may copy the Application(s) only as needed for the Licensee's backup, development, testing and disaster-recovery purposes, provided that Licensee reproduces all copyright notices and other proprietary notices and legends, regardless of form, contained in or affixed on the Application(s). Licensee shall not reverse engineer, decompile or disassemble the Application(s) or any part thereof. Licensee may allow its third party consultants to access and use the Application(s) solely in support of Licensee's operations and permitted use hereunder, provided that any such third party is under written restrictions and terms and conditions of confidentiality as restrictive as those contained in this Agreement. Licensee is responsible for the acts and omissions of its employees, agents, contractors and others it permits to use or have access to the Application(s).
- (e) If the Hardware becomes inoperable or is to be replaced, Local-Access Licensees may temporarily install the Application(s) on other similar hardware at the same or other location(s) while correcting the inoperability or to effect the replacement. If Licensee wishes to permanently relocate the Application(s) to other hardware requiring a different version of the Application(s) or requiring different media, or if Licensee wishes to permanently relocate the Application(s) to a different location or on replacement hardware, Licensee may do so, but shall promptly notify Licensor in writing of such relocation or replacement. If such relocation or replacement requires Licensor to provide Licensee an additional copy of the Application(s),

Licensor shall invoice Licensee for the related media, shipping and handling costs.

Section 3. Fees and Charges

- (a) After shipment of the Application(s) to Licensee, or if Licensor is to host the Application(s), after Licensee is provided access to a hosted version of the Application(s), Licensor shall invoice Licensee at the address shown on the Order Form for the License Fee, Hosting Fee (if applicable), Support Fee and other charges provided for under the Order Form for the Initial Service Year. Any Travel Fees incurred in connection with installation, training, implementation, data conversion and/or services at Licensee's facilities shall be invoiced to and reimbursed by Licensee. Licensee shall pay all such invoices within 30 (thirty) days.
- (b) Each invoice sent to Licensee for a new Service Year shall be sent to Licensee at the address shown on the Order Form at least 30 (thirty) days before the applicable Anniversary Date. If Licensee desires to receive the tax-year version of the Application(s) for a then upcoming Service Year, Licensee shall pay such invoice so that Licensor receives such payment on or before the applicable Anniversary Date. If during a given Service Year Licensee desires to discontinue its receipt of (and duty to pay for) the tax-year version of the Application(s) associated with calendar years subsequent to such then-current Service Year (and discontinue its right to receive, and obligation to pay for, Support services for such subsequent calendar years), Licensee must notify Licensor in writing of its intention at least thirty (30) days prior to the end of the then current Service Year, in which event such discontinuation shall take effect upon the close of the then current Service Year; *provided, however*, that such written notice of discontinuation is accompanied by payment in full of the balance of any unpaid License and Support Fees and other charges for the then current and any prior Service Years and for all Additional Service Years, if any, committed to by Licensee, as shown on the Order Form.
- (c) Licensee shall notify Licensor in writing (i) of any increase -- above the number of Authorized Users specified in the Order Form -- in the number of persons who at any time make simultaneous use of the Application(s) or (ii) if it wishes to, or, in order to avoid breach hereof needs to, increase its number of Authorized Users. If applicable, Licensor shall invoice Licensee after receipt of such notification for any additional fees due. On reasonable prior written notice, Licensor and/or an independent certified public accountant acting on Licensor's behalf shall have the right to audit, including at Licensee's facilities, Licensee's use of the Application(s), but not more than once in any 12 (twelve)-month period at Licensee's facilities unless Licensor certifies to Licensee it has reason to believe use is or has not been in accord with this Agreement. Licensor shall be solely liable for the cost of such audit unless a shortfall of five percent (5%) or more of the fees due Licensor is found for any 12 (twelve)-month period, in which case, if the audit results are not shown by Licensee to be materially incorrect, Licensee shall pay for the reasonable costs of the audit.
- (d) Licensor shall provide a replacement copy of the Application(s) if Licensee loses or damages such and requests a replacement copy. Licensor shall invoice

Licensee for the related media, shipping and handling costs.

- (e) Licensors shall reserve the right to charge a late fee of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less, on all amounts due hereunder which are not paid in full on time, and which are not, in good faith, being disputed. Licensor reserves the right to suspend the License, Support and Updates if amounts due Licensor from Licensee in accordance with this Agreement exceed 30 (thirty) days past due.

Section 4. Installation and Maintenance of the Application(s)

- (a) Unless otherwise agreed to in writing by the parties, Licensee shall be responsible for the installation of the Application(s); however, Licensor shall, at no additional charge to Licensee, provide Licensee reasonable assistance by telephone, email and/or the Internet on the installation of the Application(s) upon the request of Licensee.
- (b) Upon receipt by Licensor of written notification of a failure of the Application(s) to operate, in any material respect, in conformance with the then-current Documentation for the Application(s) or of a failure of Licensor to provide any services hereunder as warranted herein, Licensor shall, at no additional charge to Licensee, endeavor to correct such failure or provide a workaround to the problem as soon as reasonably possible. Licensee shall provide further written details and documentation of such failure if requested by Licensor. Licensor's duties under this paragraph shall apply only if Licensor, without taking extraordinary measures or time, is able to reproduce in its own environment or otherwise verify the failure complained of. Any failures that are not of a critical nature may be deferred for correction to a subsequent scheduled Update, and Licensor reserves the right to determine which failures (if any) are or are not critical. Licensor reserves the right to decline correction or other support under this paragraph if the reason for the failure complained of entirely or substantially results from any modification of the Application other than by Licensor or its designees, results from conduct in breach of this Agreement, results from problems or non-standard attributes or performance of the Hardware, from use of other software with the Application(s) (or on the Hardware) or from use or servicing of the Application by, or connectivity, goods or services supplied or performed by, third parties (unless authorized by this Agreement), results from abuse, neglect or causes not within the reasonable control of Licensor, or would have been avoided had Licensee used the then most current Updates or version of the Application(s) (collectively, "**Disqualifying Conditions**"). Licensor reserves the right to charge Licensee for the cost of its time and materials expended in addressing any reported failure if it turns out that the Application or other condition was not in need of correction as notified to Licensor or if any of the conditions in the preceding sentence are present.
- (c) Licensor shall, at no additional charge to Licensee, also provide Licensee reasonable Support to answer Licensee's questions on the use of the Application(s). Telephone support shall be available during the support hours posted on Licensor's web site (<http://www.redmoonsolutions.com>), exclusive of Licensor

holidays.

- (d) As appropriate, when Licensor provides Updates, the Updates will be accompanied by documentation that describes the nature of the Update(s). Licensee shall be responsible for using the Updates provided by Licensor; however, Licensor shall, at no additional charge to Licensee, provide reasonable telephone, email and/or Internet assistance on the use of any such Updates upon the request of Licensee.
- (e) The License Fee for a tax-year version of the Application provided to Licensee hereunder shall also entitle Licensee to receive, without additional charge, all Updates for such tax-year version that Licensor distributes, during that Service Year, generally without additional charge to other licensees of that version.
- (f) The obligation of Licensor herein to provide Support, and any warranty made by Licensor, is conditioned upon Licensee using the then-current version of the Application(s) in accordance with the terms of this Agreement, upon Licensee using the Application(s) in accordance with the then-current version of the applicable Documentation, upon Licensee not making or permitting a third party to make any modification to the Application(s) and upon no Disqualifying Condition being present.

Section 5. Taxes

The fees do not include any taxes. Where applicable, there shall be added to the fees any taxes on such fees, including, but not limited to, state and local sales, use or excise taxes, but excluding any taxes on Licensor's net income. Applicable taxes will be invoiced by Licensor to Licensee unless Licensee provides Licensor with a valid and applicable tax exemption certificate before such invoice is generated.

Section 6. Limited Warranty and Indemnity

- (a) Licensor warrants to Licensee that to its knowledge it has title to and/or the right to license the Application(s) and the Application(s) do not infringe upon any presently-issued U.S. patent, copyright, trade secret or trademark rights of any third party ("**IP Rights**"). If Licensee promptly makes Licensor aware of any such claim or action against Licensee by a third party, and offers the defense thereof to Licensor, Licensor shall defend at its expense any third-party claim or action and pay any damages finally awarded in any such claim or action alleging that the Application(s) as provided by Licensor infringes any such IP Rights (an "**Infringement Claim**"). The obligations of the immediately preceding sentence shall apply only if: (i) Licensee notifies Licensor in writing promptly after Licensee becomes aware of such claim (however, the failure to so notify shall not affect Licensee's rights under such preceding sentence unless, and then only to the extent that, Licensor has been actually prejudiced thereby); (ii) Licensor has sole control of the settlement, compromise, negotiation, and defense of any such action (Licensor may not agree, however, to any settlement that involves injunctive or equitable relief directly affecting Licensee or admission of liability by Customer without obtaining Customer's prior written consent); and, (iii) Licensee provides reasonable cooperation in the defense of any such action and in no event attempts to settle such claim or action in whole or in part without Licensor's prior written approval. Notwithstanding the preceding terms of

this paragraph, Licensor will not be obligated regarding any Infringement Claim in the event the infringement alleged or at issue results from (1) customizations or other modifications made to the Application(s) other than by Licensor or its designees, (2) use of the Application(s) in combination with other products, services, processes or materials (3) Licensee's continued use of the Application(s) after being notified of the alleged infringement or (4) Licensee's failure or delay to use the most recent Update(s).

- (b) If an Infringement Claim is asserted against Licensee, or if Licensor has reason to believe an Infringement Claim might be made against Licensee, Licensor or others, and Licensor, in its sole discretion, cannot reasonably either procure the right to have Licensee continue to use the Application(s) or replace or modify the Application(s) with non-infringing programs of equivalent functionality, then either party may terminate this Agreement and Licensor shall refund to Licensee the License Fees paid by Licensee to Licensor during the then-current Service Year, less a reasonable adjustment reflecting the period of Licensee's productive use of the Application(s) during such Service Year.
- (c) Licensor further warrants to Licensee that the Application(s) have been tested by Licensor for viruses using tools or practices commonly used in the information technology industry and that no viruses were found, or they were removed, disabled or quarantined.
- (d) Licensor also warrants to Licensee, subject to Section 4(f), that when first made available to Licensee the Application(s) and any Updates will substantially conform, in all material respects, to the then-current Documentation applicable to them if properly used.
- (e) Licensor warrants that any services provided under this Agreement will be performed with reasonable care, and Licensee warrants any tasks it performs in connection with this Agreement that might affect such services or the use of the Application(s) will likewise be performed with reasonable care.
- (f) AS LICENSEE'S SOLE REMEDY AND LICENSOR'S SOLE OBLIGATION REGARDING A BREACH OF THE WARRANTIES UNDER SECTION 6(c), (d) OR (e), OR IN THE EVENT OF ANY ERROR, DEFECT, DEFICIENCY OR OTHER PROBLEM CONCERNING THE APPLICATION(S) AND FOR WHICH LICENSOR IS RESPONSIBLE HEREUNDER, LICENSOR SHALL ENDEAVOR TO CORRECT ANY MATERIAL NON-CONFORMANCE IN ACCORDANCE WITH SECTION 4(B) HEREOF BUT SUBJECT TO THE OTHER TERMS OF SECTION 4 HEREOF.
- (g) Licensee shall be solely responsible for its use of and determining its desired results from the use of the Application(s), evaluating the capabilities of the Application(s) and successfully operating the Application(s). Licensee acknowledges that the Application(s) may contain tax or other calculations that may be based, in part, upon interpretations of federal, state and foreign tax laws and/or other regulations or statutes. Licensee shall review the effect of the interpretations contained in the Application(s), and other data generated by the Application(s), with appropriate professional advisors. Licensee shall be solely responsible for ensuring that any tax returns generated by, or prepared with the use of, the Application(s) are properly prepared and are filed in accordance with all applicable

laws and regulations.

- (h) THE FOREGOING WARRANTIES SET FORTH IN THIS SECTION 6 ARE IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, GUARANTEES, COMMITMENTS AND CONDITIONS CONCERNING THE APPLICATION(S), UPDATES, THE DOCUMENTATION, ANY SERVICES OR THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR OTHERWISE. LICENSOR DOES NOT GUARANTEE THE APPLICATIONS, UPDATES, DOCUMENTATION OR SERVICES WILL BE ERROR FREE, WILL MEET LICENSEE'S PARTICULAR EXPECTATIONS OR PURPOSES OR THAT BUGS, ERRORS OR NON-CONFORMANCES WILL BE DISCLOSED IN THE DOCUMENTATION (OR OTHERWISE). LICENSOR'S SOLE DUTY REGARDING BUGS, ERRORS OR NON-CONFORMANCES WILL BE TO USE REASONABLE EFFORTS TO CORRECT ANY MATERIAL BUGS, ERRORS OR NON-CONFORMANCES IN ACCORDANCE WITH AND SUBJECT TO SECTION 4 HEREOF.
- (i) It is Licensee's responsibility to maintain to the extent possible back-up copies of all data processed by, used with or resulting from use of the Application.

Section 7. Limitation of Liability

WITH RESPECT TO THE APPLICATION(S), ANY UPDATES, THE DOCUMENTATION, ANY SERVICES OR THIS AGREEMENT GENERALLY OR ANY ACTUAL OR ALLEGED BREACH HEREOF, (i) IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY SPECIAL CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, LOSS OR LIABILITY, NOR FOR ANY LOSS OF OR DAMAGE TO REVENUE, PROFITS, BUSINESS OPPORTUNITY, BUSINESS CONTINUATION, DATA, OR REPUTATION, EVEN IF THE PARTY HAS BEEN ADVISED OF OR WAS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, LOSS OR LIABILITY, AND (ii) EXCEPT FOR AN OBLIGATION OF INDEMNITY THAT LICENSOR MIGHT HAVE UNDER SECTION 6(a), LICENSOR'S TOTAL LIABILITY (REGARDLESS OF THE NUMBER AND TIMING OF CLAIMS) SHALL NOT EXCEED, IN THE AGGREGATE, (A) IN THE CASE OF ANY SERVICES HEREUNDER (EXCLUDING HOSTING SERVICES) AS TO WHICH A PARTICULAR FEE IS CHARGED, THE PORTION OF THAT FEE ASSOCIATED WITH THE PARTICULAR WORK OR OTHER SERVICES GIVING RISE TO LIABILITY, NOR (B) IN ALL OTHER CASES, THE GREATEST AMOUNT PAID BY LICENSEE TO LICENSOR HEREUNDER IN LICENSE FEES AND HOSTING FEES FOR ANY SERVICE YEAR COMPLETED AT THE TIME A CLAIM IS FIRST ASSERTED (OR, IF A CLAIM IS FIRST ASSERTED OR THIS AGREEMENT TERMINATES BEFORE THE INITIAL SERVICE YEAR HAS LAPSED, THE LICENSE FEES AND HOSTING FEES PAID BY LICENSEE TO LICENSOR HEREUNDER IN CONNECTION WITH THE INITIAL SERVICE YEAR).

THE FOREGOING LIMITATIONS AND EXCLUSIONS SHALL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBLE EXISTENCE OF DAMAGES OR LIABILITY OF THE KIND LIMITED OR EXCLUDED, AND REGARDLESS OF THE THEORY OF RELIEF ASSERTED

(E.G., WHETHER IN CONTRACT, TORT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY IN TORT OR BY STATUTE, OR OTHERWISE) AND WHETHER OR NOT ANY REMEDY OFFERED OR PERFORMED IS HELD TO HAVE FAILED OF ITS ESSENTIAL PURPOSE BUT SHALL NOT APPLY REGARDING ANY OBLIGATION OF LICENSEE UNDER SECTIONS 2, 3, 5, 8 OR 10(d). ANY ACTION FOR RELIEF OF ANY KIND MUST BE BROUGHT WITHIN ONE YEAR AFTER THE CAUSE OF ACTION AROSE. THE ALLOCATIONS OF LIABILITY IN THIS SECTION 7 (LIMITATION OF LIABILITY) REPRESENT THE AGREED AND BARGAINED-FOR UNDERSTANDING OF THE PARTIES AND LICENSOR'S COMPENSATION HEREUNDER REFLECTS SUCH ALLOCATIONS. TO THE EXTENT, IF ANY, THAT APPLICABLE LAW PROHIBITS THE LIMITATIONS OR EXCLUSIONS OF LIABILITY PROVIDED FOR IN THIS SECTION 7, THIS SECTION 7 SHALL BE MODIFIED ACCORDINGLY, BUT NO FURTHER. THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

Section 8. Confidentiality

Licensee shall take reasonable steps and security precautions, and use reasonable care, to prevent the unauthorized use and disclosure of the Application(s), Updates and Documentation, and all information, systems, methodologies and materials associated with any of them or with Licensor's performance of this Agreement and to maintain the confidentiality of all such materials and information, but, in any event, not less than the care that it takes to protect its own proprietary or confidential materials and information of like kind. If Licensee provides Licensor information that is marked "Confidential" or "Proprietary" or that a reasonable person would treat as confidential, Licensor shall likewise take reasonable steps and security precautions, and use reasonable care, to prevent the unauthorized use and disclosure of such information and to maintain the confidentiality of all such materials and information, but, in any event, not less than the care that it takes to protect its own proprietary or confidential materials and information of like kind. Both parties understand that a release of confidential information could cause irreparable harm and therefore agree that a party may seek an injunction against the other party to prevent or redress the unauthorized use or disclosure of any confidential information, in addition to any other relief provided by law, and in such event no bond need be posted and it shall be deemed stipulated that damages alone would be insufficient remedy.

Section 9. Hosting Services; Other Services; Updates; Certain Licensee Duties

In no event shall Licensor be responsible for any failure or delay resulting from causes beyond its control. Licensor shall be free to delegate its duties under this Agreement and employ subcontractors; to the extent Licensor does so it shall remain responsible to Licensee for any work or other performance rendered by such delegates/contractors, and Licensee agrees to look solely to Licensor (and agrees to waive all claims against any such delegates/contractors) concerning in any way such work or other performance or this Agreement. For Hosting-Access Licensees, the terms of the Hosting Addendum, attached as a part of this Agreement, shall control over any inconsistencies between those terms and the terms on this General Terms & Conditions Addendum. Insofar as a Data Conversion Addendum or Additional Services Addendum is attached as a part of this Agreement (and indicated on the

Order Form), the terms of that Addendum shall control over any inconsistencies between those terms and the terms of this General Terms & Conditions Addendum. Only those services specifically required by the express terms of this Agreement shall be binding on Licensor. Licensee agrees that Updates may be provided, in Licensor's discretion, from time to time during the term of this Agreement (including, without limitation, on or about the beginning and midpoint of each calendar year during such term). Licensee agrees that it will be solely responsible for the use of the results of any services provided under this Agreement (or any addendum). Regarding any services provided by Licensor under this Agreement (or any addendum), Licensee shall fulfill the following responsibilities: (i) timely provide reliable, accurate and complete data, materials, information, cooperation and assistance as reasonably requested by Licensor; (ii) make timely decisions and obtain requested management approvals; (iii) furnish Licensor on-site personnel with suitable office environment, resources and supplies and (iv) assure that all assumptions specified in this Agreement (or any applicable Addendum) are met.

Section 10. Term and Termination

- (a) Service Year Renewals shall continue, and this Agreement shall remain in effect, unless and until terminated upon timely-given notice and otherwise in accordance with the express terms of this Agreement. Except insofar as otherwise stated on the Order Form, Service Year Renewal shall occur on each anniversary of the Initial Service Year. Upon each Service Year Renewal, Licensee shall be entitled to receive and/or access, and use, any Updates provided by Licensor in respect of the applicable Service Year and shall pay the Renewal Charges for such Service Year. A party shall have the right to terminate this Agreement if the other party fails to cure a material breach of this Agreement within thirty (30) days after receiving written notice of such breach from the non-breaching party.
- (b) Licensee may terminate annual Service Term Renewal, or this Agreement generally, without cause and at any time by giving Licensor at least thirty (30) days prior written notice of its decision to so terminate, but in any case such notice (i) must, in the case of termination of annual Service Term Renewal, be given not later than within thirty (30) days prior to the end of the then current Service Year and (ii) must be accompanied by payment in full of any unpaid fees and charges for the current and all previous Service Years, for any Service Year resulting from annual Service Year Renewal and for all Service Years, if any, committed to by Licensee, as shown on the Order Form. If written notice of termination of Service Term Renewal, or of this Agreement generally, has not been duly given within thirty (30) days of the end of any then pending Service Year, then Licensee shall be deemed to have elected Service Year Renewal for the next subsequent Service Year.
- (c) Notwithstanding anything herein to the contrary, if Licensor elects at any time, which it may do in its sole discretion, to terminate annual Service Year Renewal for (or as of) the then subsequent calendar year or Service Year, Licensor may terminate annual Service Year Renewal effective as of the end of the then-current Service Year by providing Licensee written notice of such termination not less than thirty (30) days prior to the end of such then-current Service Year. Licensee shall be entitled to the return of

any fees that have been paid in advance for any then contemplated, but not yet begun, Service Years.

- (d) Within ten (10) days following the effective date of any termination of this Agreement under Section 10(a) or 10(b) above, Licensee shall erase from all physical media all images and copies of the Application(s), or return all copies of the Application(s) to Licensor, and certify in writing to Licensor that these requirements have been met in full. Local-Access Licensees may, however, keep one (1) copy of the Application(s) solely for archival and disaster-recovery purposes. All copies of the Application(s) shall remain the property of Licensor. Upon the effective date of any termination of this Agreement for any reason, the License shall also terminate and all of Licensor's obligations hereunder, including but not limited to any obligations to provide Updates, Hosting Services, Support Services or other services, shall cease. Upon the effective date of any termination of annual Service Year Renewals for any reason, all of Licensor's obligations to provide Updates, Hosting Services, Support Services or other services, shall cease.
- (e) Notwithstanding the termination of this Agreement for any reason, the terms of the following sections of this Agreement shall survive such termination: Sections 5, 6, 7, 8, 10, and 11.

Section 11. General Provisions

- (a) The laws of the State of Florida (excluding conflicts of laws principals) will govern this Agreement and the parties' respective rights and duties regarding it. All claims or actions regarding this Agreement, its subject matter or any related dispute may be brought or maintained only in the State or federal courts located within the region encompassed by the federal Middle District of Florida, Tampa Division (including their associated courts of appeal) and the parties agree to such jurisdiction (including personal jurisdiction) exclusively.
- (b) Licensee shall not assign this Agreement or the Application(s) without Licensor's prior written consent. Such consent shall not be required if assignment is to an Affiliate or an entity that is not a competitor of Licensor that acquires all of, or substantially all of, Licensee's business or to an entity that is not a competitor of Licensor whose business Licensee acquires all of, or substantially all of, provided that Licensee is not in breach of this Agreement and promptly notifies Licensor in writing after such assignment. If Licensor assigns the Application(s) or this

Agreement, Licensor shall promptly notify Licensee in writing after such assignment. The Application(s) shall not be made the subject of any leasing arrangement. Except as provided above, this Agreement shall be binding on, and inure to the benefit of, the heirs, successors and assigns of the parties to this Agreement.

- (c) The Application(s) may be subject to U.S. and other government export-control regulations. Licensee shall comply with all applicable export laws and regulations related to the use, disclosure, export or reexport of the Application(s).
- (d) The waiver or failure of a party to exercise any of its rights hereunder shall not be deemed a waiver of any future right in regard to the same matter or any other matter. This Agreement may not be modified except by a written instrument duly executed by both parties.
- (e) If any provision of this Agreement is found to be invalid, illegal or unenforceable under any applicable statute or law, it is to that extent deemed to be omitted, and the remaining provisions of this Agreement shall not be affected in any way.
- (f) All notices required or permitted to be given hereunder by one party to the other shall be deemed given if sent by registered or certified mail, with proof of delivery, or by hand, email, fax or courier, but with proof of delivery. Notices to Licensor shall be sent or delivered to the address set forth at the beginning of this Agreement and to the attention of "*Customer Accounting*." In the case of Licensee, notices shall be sent to the address on the Order Form.
- (g) The headings of the Sections of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- (h) The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- (i) Each party acknowledges that it has read and understands this Agreement and shall be bound by its terms. The parties further agree that this Agreement and its attachments contain the entire understanding and agreement of the parties with respect to the matters contained herein, and supersedes all prior and contemporaneous proposals, understandings, inducements, guarantees, representations and agreements between the parties relating to the subject matter of this Agreement.

*** END OF GENERAL TERMS & CONDITIONS ADDENDUM ***

[rev/100107]