

SOFTWARE END USER LICENSE AGREEMENT

SQL SENTRY, LLC, d/b/a SENTRYONE

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THIS SOFTWARE END USER LICENSE AGREEMENT (this "Agreement") sets forth the terms and conditions under which SQL Sentry, LLC, d/b/a SentryOne, a Delaware limited liability company, with offices located at 4001-B Yancey Road, Charlotte, North Carolina 28217 ("Licensor") is willing to provide certain Licensed Products (as defined below), including perpetual or term-based Software licenses and Professional Services (as each is defined below) to the customer referenced in an accepted Sales Order (defined below) that incorporates this Agreement ("Licensee" or "you"). Each Sales Order together with this Agreement constitutes a separate binding contract between Licensor and Licensee regarding the subject matter in this Agreement.

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the mutual promises set forth herein, Licensor and Licensee agree as follows:

1. **DEFINITIONS.** Whenever used in this Agreement, the capitalized terms quoted below will have the meaning ascribed to them in this Section.
 - 1.1. "**Confidential Information**" has the meaning set forth in Section 11 of this Agreement.

1.2. "**Copy**" or "**Copies**" means the Licensed Product (including the components thereof), any Releases, Error Correction, or Enhancement pertaining thereto, and any reproductions of the Licensed Product or any Release, Error Correction, or Enhancement pertaining thereto.

1.3. "**Delivery Date**" means the date of Licensee's receipt of the Original Licensed Product.

1.4. "**Effective Date**" means the earlier to occur of the following: (i) the date set forth on an initial Sales Order; (ii) the date Licensee makes the first payment to Licensor for the Licensed Software; or (iii) the date Licensee downloads the Licensed Software.

1.5. "**Enhancement**" means a modification of the Licensed Software by Licensor which provides (a) a capability not defined in the Product Specifications or (b) an improvement in the efficiency of the Licensed Software. Licensor may designate an Enhancement as "Major" or "Minor" depending on (a) Licensor's reasonable assessment of the Enhancement's value and (b) whether the Enhancement adds a functional extension to the preexisting Licensed Software. An Enhancement may entail a modification to the Product Specifications and/or the Object Code or may be provided to Licensee in the form of an Upgrade.

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1.9. "**License Fees**" means those amounts specified and set forth in the Sales Order.

1.10. "**License Key**" means a special security code owned and controlled by Licensor which may be required to render operational certain Licensed Products. Where necessary for operation of the Licensed Products, Licensor will provide a License Key to Licensee.

1.11. "**Licensed Documentation**" means all written materials, binders, user manuals, and other documentation and materials supplied by Licensor and related to the Licensed Software, other than the Licensed Software.

1.12. "**Licensed Product**" means collectively the Licensed Software and Licensed Documentation.

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- 1.23. "**Service Fees**" means those amounts specified in the Sales Order for professional services requested by Licensee.
- 1.24. "**Software Maintenance**" means the Error Correction support provided by Licensor.
- 1.25. "**Software Maintenance Fees**" means those amounts specified in the Sales Order.
- 1.26. "**Software Maintenance Program**" means the procedure for ongoing software maintenance set forth in Section 5 of this Agreement.
- 1.27. "**Software Maintenance Term**" means the term of Licensee's subscription to the Software Maintenance Program, as determined by Licensee's respective Sales Order.
- 1.28. "**Source Code**" means the plain text, readable computer programming code, associated procedural code, and supporting documentation for the Licensed Software.
- 1.29. "**Term**" with respect to a Term License, means the term of this Agreement, as stated in the Sales Order, and with respect to a Perpetual license, as set forth in Sections 2.1.
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1.31. **"Third Party Software"** means software and related materials that are furnished by a third party and subject to a separate license agreement between the licensor of that software and the Licensee.

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- (b) For Licensed Software licensed on a "per instance" basis, Licensee's use shall be limited to the installation and use on one instance per license;
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- (d) For Licensed Software licensed on a "per user" or "per seat" basis, Licensee's use shall be limited to access by one user or seat per license;
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- (f) For Licensed Software licensed on a "per user / device" basis, Licensee's use shall be limited to the installation and use for a single user on a single device per license;
- (g) For Licensed Software licensed on a "per site" basis, Licensee's use shall be limited to the installation and use by one location, as further specified in the Sales Order by address;
- (h) For Licensed Software licensed on a "per enterprise" basis, Licensee's use shall be limited to the installation and use by one enterprise or company, as further specified in the Sales Order;

3. DELIVERY AND INSTALLATION.

3.1. Delivery of Software. Licensor shall deliver the Licensed Product to Licensee electronically or by other methods as agreed by Licensor and Licensee on the Delivery Date.

3.2. Installation Support. Licensor shall provide Licensee with the instructions necessary for the successful installation of the Software.

4. PAYMENT TERMS.

4.1. License Fees. As compensation for the license provided in this Agreement for the Licensed Product, Licensee shall pay Licensor the License Fees as set forth in the Sales Order.

4.2. Service Fees. As compensation for the Professional Services included in the Sales Order, Licensee shall pay Licensor the Service Fees as set forth in the Sales Order.

4.3. Software Maintenance Fees. As compensation for the Software Maintenance provided by Licensor under this Agreement, Licensee shall pay Licensor the Software Maintenance Fees as set forth in the Sales Order.

4.4. Expenses. If Licensee requests Professional Services from Licensor, Licensee shall be responsible for all pre-approved, reasonable and necessary out of pocket travel, food, lodging, and related expenses incurred by the Licensor personnel in providing such Professional Services in addition to payment of any Services Fees.

4.5. Audit of Use. Licensor may, at its expense, audit Licensee's use of the Licensed Product. Audits shall be conducted during regular business hours either remotely or at Licensee's place or places of business and shall not unreasonably interfere with Licensee's business activities. Audits shall be conducted no more than once annually. If, as a result of any such audit, Licensor identifies unauthorized use of the Licensed Software, Licensee shall pay, in addition to a full License Fee for each unauthorized use of the Licensed Software in use by Licensee, all reasonable expenses of Licensor in conducting the audit.

4.6. Payment. All fees or amounts due to Licensor under this Agreement shall be due and payable in full in U.S. currency within thirty (30) days of the date of Licensor's invoice for said fees or amounts. Licensee shall have no right of offset or withholding under this Agreement. In the event the sales invoice shall be placed by Licensor in the hands of an attorney for the purpose of collection, with or without litigation, or for the purpose of enforcing Licensor's security interest in the Licensed Products, Licensee agrees to pay any and all costs associated with such placement, including, but not limited to, attorney's fees and costs incurred prior to, during, or subsequent to trial, and including, without limitation, collection, bankruptcy, or other creditor's rights proceedings.

4.7. Interest on Late Payments. All fees and amounts due to Licensor and not paid within thirty (30) days after the date such amounts are due and payable shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate of interest allowable by law.

4.8. Taxes and Other Charges. All License Fees, Service Fees, and Software Maintenance Fees are exclusive of media charges, shipping, handling, custom charges, and all state, local, and other taxes, or other taxes or charges (other than income or franchise taxes payable by Licensor) directly applicable to the licensing, installation, support or use of the Licensed Product. Licensee shall pay all charges or taxes or provide Licensor with an appropriate certificate of exemption within thirty (30) days of the date of any invoice or statement of Licensor or the taxing authorities. If Licensee elects to challenge the applicability of any tax or charge, Licensee shall pay the tax or charge to Licensor or give Licensor evidence of payment to the taxing authorities or charging entity, and Licensee may thereafter challenge such tax or charge and seek a refund.

5. SOFTWARE MAINTENANCE.

5.1. Software Maintenance. During any active Software Maintenance Term, Licensor shall provide Software Maintenance for the Licensed Software to Licensee. Software Maintenance includes Error Correction Releases and Enhancement Releases.

5.2. Purchase of Software Maintenance Subscriptions. Term Licenses include the Software Maintenance Program for the Term of the Term License. A subscription to the Software Maintenance Program is required for the first year when a Perpetual License is purchased. The Software Maintenance Term and Software Maintenance Fees shall be set forth in the Sales Order.

5.3. Software Maintenance Renewal. At least sixty (60) days prior to expiration of each Software Maintenance Term, Licensor will invoice Licensee for the next consecutive Software Maintenance Term and such Software Maintenance Program shall automatically renew unless Licensee provides notice to Licensor of its intent not to renew the Software Maintenance program not less than thirty (30) days prior to the end of the current Software Maintenance Term. If Licensee elects not to renew the Software Maintenance Program, it shall expire at the end of the current Software Maintenance Term. If Licensee fails to renew a subscription to the Software Maintenance Program, Licensee may, within 6 months of the expiration of the Software Maintenance Term, request to reinstate the Software Maintenance Program by providing notice to Licensor and paying (i) the then-current Software Maintenance Fees for the following 12 months and (ii) the Software Maintenance Fees that would have been due had Licensee renewed the Software Maintenance Program, commencing with the end of the expired Software Maintenance Term and ending the date the Software Maintenance Program is reinstated. Any Software Maintenance Term that has been expired for more than 6 months cannot be reinstated.

5.4. Notification of Suspected Licensed Software Defects. If Licensee believes there is an Error in the Licensed Software, Licensee must notify Licensor of such Error in writing, or by telephone or email. After Licensor's analysis of the reported Error, Licensor will: (i) notify Licensee whether Licensor has verified the Error; (ii) where an Error has been verified, provide Licensee of available remedies; and (iii) where a remedy is not immediately available, notify Licensee of the need for further investigation. Errors reported to Licensor during the Software Maintenance Term and subsequently verified by Licensor will be corrected in accordance with this Agreement at no charge to Licensee. Licensor reserves the right to determine the disposition of any and all reported Errors.

5.5. Support Line. As a service of the Software Maintenance Program, Licensor shall provide Licensee the availability of telephone or email services for questions or problems associated with the Licensed Products, as updated from time to time by notice to licensee, during normal business hours from 8:30 AM to 5:30 PM EST, Monday through Friday except for holidays.

5.6. Error Correction and Enhancement Releases.

5.6.1. A subscription to the Software Maintenance Program entitles Licensee to receive all new Release announcements, application notes, Error Correction Releases and Enhancement Releases (both Major and Minor), if any, issued during the Software Maintenance Term

5.6.2. Error Correction and Enhancement Releases are the property of Licensor. Error Correction and Enhancement Releases are licensed to Licensee subject to the terms and conditions of this Agreement and, upon release, become a part of the Licensed Software and the Licensed Product, as the case may be. Each Release shall consist of one or more Licensed Software programs and/or files in Object Code, or through some other medium as determined by Licensor in its sole discretion. Each Release shall also provide documentation informing Licensee of the Error Correction or Enhancement, including any significant operational differences known to Licensor. The documentation in any Releases shall be a part of the Licensed Documentation.

5.6.3. Licensee shall be responsible for the installation of all Error Correction or Enhancement Releases. Installation services are not included as part of the Software Maintenance Program and shall be separately billed to and paid by Licensee, if Licensee requests such services.

6. LICENSEE'S REPRESENTATIONS AND WARRANTIES.

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- (d) accident of Licensee or at the Licensee's premises;
- (e) neglect of Licensee;
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- (g) use of the Licensed Software with data of any entity other than Licensee; or
- (h) a power surge or failure at Licensee's physical location.

8.3. NO CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OR INABILITY TO USE, OR PERFORMANCE OR NONPERFORMANCE OF, THE LICENSED SOFTWARE, DOCUMENTATION, SERVICES OR ANY OTHER GOODS OR SERVICES PROVIDED BY LICENSOR, INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR LOSS OF DATA OR GOODWILL. THE FOREGOING SHALL NOT APPLY TO DAMAGES CAUSED BY A PARTY'S UNAUTHORIZED USE OR DISCLOSURE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY. THE FOREGOING SHALL APPLY EVEN IF IT CAUSES A FAILURE OF AN ESSENTIAL PURPOSE AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY. EXCEPT FOR FRAUD OR DAMAGES CAUSED BY A PARTY'S UNAUTHORIZED USE OR DISCLOSURE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OR INABILITY TO USE, OR PERFORMANCE OR NONPERFORMANCE OF, THE SOFTWARE, DOCUMENTATION, SERVICES OR ANY OTHER GOODS OR SERVICES EXCEED THE FEES PAID OR PAYABLE TO LICENSOR BY LICENSEE DURING THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO A CLAIM.

8.4. Allocation of Risk. This Section 8 of this Agreement allocates the risks under this Agreement between Licensor and Licensee.

THE PROVISIONS OF THIS SECTION 8 STATE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO LICENSEE, AND LICENSOR'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, OR STRICT LIABILITY IN TORT CLAIM AND ANY CLAIM REGARDING THE PERFORMANCE OR NON-PERFORMANCE OF THE LICENSED PRODUCT.

9. INDEMNITY.

9.1. Indemnity by Licensee. Licensee shall be solely responsible for, and shall indemnify, defend, and hold Licensor free and harmless from all damages, liabilities, charges, and expenses (including reasonable attorneys' fees) from all claims, lawsuits, or other proceedings arising out of or relating to (a) Licensee's use of the Licensed Product in a manner not permitted by this Agreement, not permitted by Licensor, or not in conformance with Licensor's written requirements, (b) the acts or omissions of Licensee, its Operators, its employees, and agents and all persons or entities who have access through Licensee to the Licensed Product, (c) Licensee's failure to promptly install a Release, or (d) relating to an infringement of any right resulting in any way from the use of the Licensed Software with other software or materials not licensed to Licensee by or not approved by Licensor.

9.2. Indemnity of Right of Use. Licensor shall defend or settle, at its own expense, any claim made against Licensee that the Licensed Product, in whole or in part, infringes any United States patent, copyright, trade secret, or other proprietary right, and Licensor shall pay any final judgment that may be awarded by a court against Licensee as a result of the foregoing; provided, however, Licensee shall (a) give Licensor written notice of such claim within thirty (30) days of the date Licensee first knows or should have known of the claim and (b) provide Licensor with reasonable cooperation and all information in Licensee's possession related to said claim. Licensor shall have sole control of the defense of such claims and all related settlement negotiations. Reasonable out of pocket expenses incurred by Licensee in providing assistance to Licensor in defense of such a claim shall be reimbursed by Licensor.

9.3. Remedy for Claimed Infringement. If a claim is made that the Licensed Product, or any portion thereof, infringes any United States patent, copyright, trade secret, or other proprietary right, Licensor, at its sole expense and option, may either: (a) procure for Licensee the right to exercise the rights and licenses granted hereunder with respect to the Licensed Product; (b) modify the Licensed Product to make it non-infringing but continue to meet the Product Specifications; (c) replace the Licensed Product with equivalent but non-infringing software of like functionality that meets the Product Specifications; or (d) terminate this Agreement and refund (i) any fees prepaid by Licensee, or (ii) in the event Licensee has elected to purchase a Perpetual License to the Licensed Software, then upon the return of the Licensed Product, an amount equal to the License Fee less depreciation based on a 3-year straight line schedule, provided, however, that the liability of Licensor pursuant to this Section 9.3 shall be subject to the limitations set forth in Section 8.3 of this Agreement, and Licensor shall have no liability for any claim of infringement based on use of a superseded or altered Release of the Licensed Product if the infringement would have been avoided by the use of the most current, unaltered Release of the Licensed Product which is available to Licensee either during the Warranty Period or would be available under the Software Maintenance Program, regardless of whether Licensee subscribes to the Software Maintenance Program.

9.4. Limitation of Indemnity. Licensor shall have no liability to Licensee or any assignee, transferee, or sublicensee of Licensee, as applicable, for any claim of infringement that is based upon any combination of the Licensed Software with software not supplied by or authorized by Licensor if such claim would have been avoided but for such combination; or any modifications to the Licensed Software other than Releases provided by Licensor or otherwise approved by Licensor. This Section 9 sets forth Licensor's only obligations and Licensee's only remedies for claims that the Licensed Product infringes on the Intellectual Property Rights of a third party.

10. TERMINATION AND DEFAULT.

10.1. Termination by Licensor. Licensor may terminate this Agreement and the Perpetual License or Term License, as the case may be, granted to Licensee upon the occurrence of any of the following events:

- (a) In the event of a Perpetual License, Licensor may revoke the Perpetual License if Licensee fails to pay Licensor the License Fee when due and the failure is not cured within 10 days of Licensee's receipt of Licensor's written notice thereof;

- (b) In the event of a Term License, Licensor may terminate the Term License if Licensee fails to pay Licensor the License Fee when due, or fails to pay any fee, charge, tax, or other reimbursement when due and the failure to pay is not cured within ten (10) days of Licensee's receipt of Licensor's written notice thereof;
- (c) Licensee transfers title to or possession of the Licensed Product without Licensor's prior written consent;
- (d) Licensee breaches any material obligation of Licensee under this Agreement and such breach is not cured within thirty (30) days of Licensee's receipt of written notice thereof from Licensor;
- (e) Licensee becomes insolvent, or is adjudicated as bankrupt, or voluntarily seeks protection under any bankruptcy or insolvency law; or
- (f) Licensee makes an assignment of its assets for the benefit of creditors or any arrangement with its creditors.

10.2. Termination by Licensee. Provided Licensee is not in default under this Agreement or the Sales Order, this Agreement may be terminated by Licensee by giving Licensor ninety (90) days prior written notice of termination. Any such termination by Licensee shall be without refund of any License Fee, Service Fee, Software Maintenance Fee, or any other amount paid, paid in advance, or then due and payable to Licensor. Licensee may terminate this Agreement in the event Licensor breaches any material obligation of Licensor under this Agreement and such breach is not cured within thirty (30) days of Licensor's receipt of written notice thereof from Licensee or Licensor becomes insolvent, or is adjudicated as bankrupt, or voluntarily seeks protection under any bankruptcy or insolvency law.

10.3. Licensor Remedies Upon Termination. In the event of any termination of this Agreement:

- (a) Licensee shall cease all further use of the Licensed Product, or any portion thereof, in all forms and on all media and computer memory, and Licensee shall immediately: (i) surrender and deliver the Licensed Product and all Copies thereof to Licensor; or (ii) at the option of the Licensor, destroy all Copies of the Licensed Product, including backup and archival copies, and provide satisfactory evidence of such destruction in the form of an affidavit certifying that Licensee has complied with the terms of this Section 10.3(a), delivered to Licensor within one (1) month following termination;
- (b) Licensee shall pay all outstanding fees and amounts owed to Licensor as of the date of termination;
- (c) Licensor may cease performance of Licensor's obligations under this Agreement, without liability to Licensee;
- (d) where such termination is the result of a breach or threatened breach of this Agreement by Licensee, Licensor may apply for and obtain injunctive relief against the breach or threatened breach; and
- (e) Licensee shall promptly return to Licensor all of Licensor's Confidential Information.

10.4. Equitable Relief. The Parties acknowledge and agree that there may be no adequate remedy at law for the failure of the other Party to comply with any of the material terms and conditions of this Agreement, including, without limitation, a failure to cease the use of the Licensed Product upon termination of the license or a breach of the confidentiality provisions of Section 11, and the Parties agree that, in the event of any such failure, the non-breaching Party shall be entitled to equitable relief by way of temporary restraining order, temporary injunction and permanent injunction and such other and further relief as any court of competent jurisdiction may deem proper.

10.5. Remedies Cumulative. The rights and remedies of Licensor and Licensee in this Section 10 shall be cumulative and in addition to all other rights and remedies available at law and in equity.

10.6. Survival. The provisions of this Agreement which by their sense and context should survive any termination or expiration of this Agreement, including without limitation Sections 2.5, 4, 8.3, 8.4, 9, 10 and 11 of this Agreement, shall survive termination of this Agreement and shall remain binding on the Parties.

11. CONFIDENTIALITY.

11.1. As used in this Agreement, the term "Confidential Information" means: all information, including, but not limited to, the trade secrets and know-how of the respective Parties, that a reasonable person in the Parties' industries would regard as being proprietary or confidential, and any information marked "Confidential" or "Proprietary" and, in the case of Licensor, the Licensed Product; provided, however, Confidential Information shall not mean any information that:

- (a) is known to the receiving Party at the time of disclosure by the disclosing Party;
- (b) is developed independently by the receiving Party without use of the disclosing Party's Confidential Information;
- (a) is within, or later falls within, the public domain without breach of this Agreement by the receiving Party;
- (d) is publicly disclosed with written approval of the disclosing Party; or
- (e) becomes lawfully known or available to the receiving Party without restriction from a source having the lawful right to disclose the information without breach of this Agreement by the receiving Party.

The receiving Party shall have the burden of proof as to establishing by competent evidence any of the exceptions set forth in Section 11.1(a) to (e) above.

11.2. In the event the receiving Party is legally requested or compelled in any form to disclose any of the disclosing Party's Confidential Information, the receiving Party, unless prohibited by applicable law, shall provide the disclosing Party with prompt written notice of such request, so that the disclosing Party may seek a protective order or pursue other appropriate remedies to protect the confidentiality of its information. If such protective order or other remedy is not obtained, the receiving Party will furnish only that portion of the Confidential Information which the receiving Party, upon the opinion of its counsel, is legally required to furnish. The receiving Party will reasonably assist the disclosing Party in its efforts to obtain a protective order or other remedies to protect or limit the disclosure of the information subject to the request.

11.3. Each Party acknowledges that in the performance of this Agreement a Party may receive Confidential Information from a disclosing Party and that such Confidential Information is the exclusive property of the disclosing Party. The receiving Party agrees to hold the Confidential Information of the disclosing Party in strict confidence in accordance with the provisions of this Agreement. A receiving Party:

- (a) shall not permit or suffer its employees or agents to remove any proprietary or other legends or restrictive notices contained or included in any Confidential Information provided by the disclosing Party;
- (b) shall not permit or suffer its employees or agents to copy or modify any Confidential Information except as specifically authorized in this Agreement;
- (c) shall not disclose any Confidential Information to a third party without the prior written consent of the disclosing Party;

- (d) shall only use the disclosing Party's Confidential information for purposes of performing its obligations under this Agreement, and shall not otherwise use the information for its own benefit or for the benefit of any third party; and
- (e) agrees to keep secure and maintain the Confidential Information of the disclosing Party in a manner no less protective than that used to maintain the confidentiality of the receiving Party's own Confidential Information.

11.4. **Limitation on Disclosure.** A receiving Party may disclose Confidential Information to its employees or agents under the control and direction of the receiving Party only in the normal course of business and on a need to know basis within the scope and purpose of this Agreement. Provided, however, prior to any disclosure all such agents shall have entered into written agreements with the receiving Party requiring such agents to treat and use all such Confidential Information in a manner consistent with the terms and conditions of this Agreement. Except as expressly set forth herein, no licenses under any patent, copyright or other Intellectual Property Rights of either Party are granted.

11.5. **Return of Confidential Information.** Upon any termination, cancellation, or rescission of this Agreement, a receiving Party shall, at the option of the disclosing Party: (i) surrender and deliver all Confidential Information of the other Party, including all copies thereof; or (ii) destroy the Confidential Information and all copies thereof and provide satisfactory evidence of such destruction in the form of an affidavit certifying such destruction to the disclosing Party within one (1) month following termination.

11.6. **Disclosure of Licensed Software Constitutes Incurable Material Breach.** Licensee acknowledges and agrees that any disclosure of the Licensed Software to a third party in violation of the terms of this Agreement constitutes a material, incurable breach of this Agreement and shall result in the automatic termination of this Agreement and the immediate termination of all licenses granted to Licensee by this Agreement. Licensee further agrees that it shall be strictly liable for all damages to Licensor that result from any disclosure of the Licensed Software to any third party.

12. GENERAL.

12.1. **Relationship of the Parties.** The Parties hereto are and shall remain independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture, or agency relationship between the Parties. Neither Party shall have the right to obligate or bind the other Party in any manner to any third party.

12.2. **Assignment/Sublicense.** Licensee shall not, directly or indirectly, by operation of law or otherwise, transfer or assign the Licensed Product or this Agreement, or transfer, assign or sublicense any license rights granted hereunder, in whole or in part, without having secured the prior written consent of Licensor, which consent shall be at Licensor's sole discretion. Any attempted assignment in violation of this Section 12.2 shall be void. Licensor may freely assign this Agreement and the rights afforded hereunder to any entity which acquires title to the Licensed Product.

12.3. **Notices.** All notices required to be given pursuant to this Agreement shall be transmitted either by (i) delivery in person, (ii) registered mail, (iii) certified mail, return receipt requested, or (iv) overnight mail, addressed to the Party to be notified at the address given by such Party on the Sales Order, or to such other address (or person) as such Party shall specify by like notice hereunder.

12.4. **Export Controls.** Each Party to this Agreement acknowledges its obligations to control access to Technical Data (as defined by the U.S. Department of Commerce, Office of Export Administration) under the U.S. Export Control Laws and Regulations and agrees to adhere to all applicable U.S. Export Control Laws and Regulations with regard to any Technical Data received under this Agreement. Licensee may not re-export or divert the Licensed Products or any related Technical Data, documents or materials, or direct products thereof, to any other

country or any resident thereof, unless Licensee has obtained appropriate prior authorization from Licensor and the U.S. Department of Commerce.

12.5. Compliance with Laws. Each Party shall comply with all applicable state, federal and local laws, executive orders and regulations in the performance of its obligations under this Agreement.

12.6. Headings. The headings and captions appearing in this Agreement have been inserted for the purposes of convenience and ready reference only and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the provisions to which they appertain.

12.7. Form. Where the context so admits, words and expressions appearing in the singular in this Agreement may be interpreted in the plural, and vice versa.

12.8. Integration. This Agreement, together with the Sales Order, constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between them, whether written or oral, between them relating to the subject matter of this Agreement. This Agreement may not be supplemented, explained or interpreted by any evidence of trade usage or course of dealing. EXCEPT AS EXPLICITLY PROVIDED HEREIN, UNDER NO CIRCUMSTANCES MAY THE TERMS OF THIS AGREEMENT OR ANY LICENSOR SALES ORDER BE AMENDED, MODIFIED, SUPPLEMENTED, ALTERED, SUPERSEDED OR REPLACED BY ANY NON-LICENSOR PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT DELIVERED BY LICENSEE TO LICENSOR. EACH PARTY ACKNOWLEDGES AND AGREES THAT, AS A CONVENIENCE TO LICENSEE AND ONLY FOR LICENSEE'S INTERNAL ACCOUNTING PROCEDURES, LICENSEE MAY DELIVER TO LICENSOR A LICENSEE PURCHASE ORDER OR OTHER SIMILAR DOCUMENT FOR ANY TRANSACTION CONTEMPLATED HEREUNDER AND THAT NO ACTION BY LICENSOR, INCLUDING LICENSOR'S DELIVERY OF ANY LICENSED MATERIALS OR ACCEPTANCE OF PAYMENT, SHALL BE DEEMED TO BE ACCEPTANCE OF ANY OF THE TERMS OR CONDITIONS CONTAINED IN SUCH LICENSEE PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT AND SUCH TERMS AND CONDITIONS ARE HEREBY REJECTED, SHALL BE VOID AND OF NO FORCE OR EFFECT, UNLESS ACCEPTED BY LICENSOR PURSUANT TO A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES AND EXPRESSLY REFERRING TO THIS SECTION 12.8.

12.9. Modification or Amendment. No modification to, amendment of or other change in this Agreement shall be binding on Licensor unless it is in writing and signed by authorized representatives of Licensor. Licensor may from time to time, in its discretion, modify this Agreement in connection with the issuance of certain Enhancements or new releases. In the event of a proposed modification to this Agreement, Licensor shall request Licensee to click to agree to the terms of the modified Software End User License Agreement prior to downloading any such Enhancement or new release, as the case may be, and any such modified Software End User License Agreement agreed to by Licensee shall supersede this Agreement.

12.10. Waiver. No waiver of any provision of this Agreement shall be effective unless made in writing and signed by the waiving Party, nor shall any such waiver, if made, constitute a waiver of any subsequent breach of the same or of any other provision of this Agreement.

12.11. Force Majeure. Neither Party shall be liable to the other by reason of any failure of performance hereunder (except obligations to pay) if such failure arises out of causes beyond such Party's reasonable control, despite the reasonable efforts, and without the fault or negligence of such Party. A Party experiencing such an event shall give as prompt notice as possible under the circumstances.

12.12. Fees and Expenses. If either Party institutes an action to enforce this Agreement or any of its terms, the prevailing Party shall also be entitled to recover all of its costs, expenses and reasonable attorneys' fees.

12.13. Authority to Contract. Each Party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed.

12.14. Jurisdiction and Venue. Should any claim or controversy arise between the Parties under the terms of this Agreement or in furtherance of this Agreement, such claim or controversy shall be resolved only in the state or federal courts of Mecklenburg County, North Carolina, and said state and federal courts for the State of North Carolina shall be the only appropriate jurisdiction and venue therefore. Licensee hereby submits to said jurisdiction and venue.

12.15. Governing Law. This Agreement shall be construed in accordance with and governed by the substantive laws of the State of North Carolina. The Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

12.16. Severability. If any provision of this Agreement is held invalid or unenforceable under any applicable law, such invalidity or unenforceability will not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, and this Agreement shall be construed as if said invalid or unenforceable provision had not been contained herein.

12.17. Negotiation. This Agreement is the result of negotiation between the Parties and, accordingly, shall not be construed more strongly for or against either Party regardless of which Party was more responsible for the preparation of this Agreement or any portion thereof.

12.18. Government End User. Where the Licensed Products are used by or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), it is provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Products clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Products--Restricted Rights at 48 CFR 52.227-19, as applicable.