

KeyMark End User License Terms and Conditions

1. **Definitions.** Capitalized terms used in these EULA Terms and Conditions shall have the following meanings:

1.1 “Additional License Limitations” shall have the meaning assigned to it in Section 2.1 (“Grant of License”).

1.2 “Agreement” means an Order Form and the documents incorporated into the Order Form including without limitation these EULA Terms and Conditions.

1.3 “Authorized Capacity” shall mean the particular capacity based scope of use rights granted to Customer and set forth in an Order Form. Authorized Capacity may be user based, server based, or any other capacity based user rights set forth in the Order Form.

1.4 “Authorized Location” shall mean the location identified in the applicable Order Form and operated by Customer.

1.5 “Customer” shall mean the licensee customer of Licensor as identified in the applicable Order Form.

1.6 “Designated Employees” shall mean the employees of Customer identified in the applicable Order for purposes of Technical Support Services.

1.7 “Documentation” shall mean all materials provided to Customer by Licensor and designated as documentation which describe the form, features or operation of the Software and which are contained in a tangible medium, such as written format, tape, magnetic or other media. Documentation shall include any Updates of Documentation which Licensor may make available to Customer pursuant to the Agreement.

1.8 “EULA Terms and Conditions” shall mean these KeyMark End User License Terms and Conditions.

1.9 “Error” shall have the meaning assigned to it in Section 7.1 (“Software Warranty”).

1.10 “Fees” shall mean the fees set forth in the Order Form.

1.11 “Key” shall mean a numerical or alpha-numerical code which is necessary to gain access to certain Software on certain media as delivered by Licensor hereunder.

1.12 “Licensor” shall mean KeyMark, Inc., a South Carolina corporation.

1.13 “Order Form” shall mean a written order form that references these EULA Terms and Conditions and which sets forth the necessary information relating to the Software, which may include, without limitation, identification of the Software licensed, if any part is in source code

form, the Authorized Location, the Authorized Capacity and any Additional License Limitations.

1.14 “Professional Services” shall mean any professional services which Customer may receive from time to time relating to the Software pursuant to a separate agreement between Customer and Licensor or an approved reseller of Licensor.

1.15 “Software” shall mean the computer software programs described in the Order Form, in object code only unless otherwise expressly set forth in the Order Form, including Updates, if any, and accompanying Documentation and as specifically licensed hereunder.

1.16 “Software License” shall have the meaning set forth in Section 2.1 (“Grant of License”).

1.17 “Specifications” shall mean the technical and performance specifications for the Software which are contained in and distributed with the Documentation.

1.18 “Technical Support Services” shall have the meaning assigned to it in Section 10 (“Technical Support Services”).

1.19 “Update” shall mean subsequent releases of the Software which are generally made available for Software at no additional charge, other than media and handling charges. Updates may include modifications of or additions to the Software, but does not include any releases, versions, options or future products which Licensor licenses separately.

1.20 “Warranty Period” shall have the meaning assigned to it in Section 7 (“Warranty and Disclaimer”).

2. Grant of Software License.

2.1 **Grant of License.** In consideration of all obligations of Customer hereunder, including without limitation the payment by Customer of the Fees, Licensor hereby grants to Customer for the term of the applicable Order Form, a non-exclusive, non-transferable license (the “Software License”) solely to (i) install one copy of the Software only at the Authorized Location; (ii) use the Software up to and for the Authorized Capacity solely for the purpose of serving the internal needs of Customer's organization and not the needs of any affiliate or any other person and (iii) use the Software subject to any additional license limitations set forth in the applicable Order Form (the “Additional License Limitations”).

2.2 **Copies.** Customer may make one copy of the Software for Customer’s internal back-up and archival purposes only, provided that such copy shall bear the original and unmodified copyright, patent and other intellectual property markings as originally delivered by Licensor. Customer may, however, make additional copies of the Documentation only as reasonably necessary to use the Software in compliance with the Agreement.

2.3 Additional Restrictions.

2.3.1 **No Implied Licenses.** The Software, including all copies thereof, are and shall

remain at all times the exclusive property of Licensor. Customer does not acquire any rights or licenses therein except those expressly granted herein and does not receive any title or interest to the Software or any changes or modifications thereto or any intellectual property rights throughout the world contained therein.

2.3.2 **No Transfer.** Customer may not market, distribute, sublicense, sell, assign, pledge, lease, transfer or in any way encumber the Software.

2.3.3 **No Reverse Engineering.** Customer hereby acknowledges that the Software contains valuable trade secret and confidential information of Licensor and others. Customer agrees not to reverse compile, reverse engineer, reverse assemble, or otherwise attempt, directly or indirectly, to obtain or create source code for the Software for any reason.

2.3.4 **Required Proprietary Notices.** Customer agrees that as a condition of its rights hereunder, each copy of the Software shall contain the same proprietary notices which may appear on or in Software as provided by Licensor to Customer and as otherwise reasonably required by Licensor.

2.3.5 **Unauthorized Distribution or Copying.** Customer agrees that using, distributing, copying, duplicating or otherwise reproducing all or any part of the Software except in strict accordance with the Agreement or otherwise violating the provisions of this Section 2.3 will be considered a material breach of the Agreement which is incapable of cure.

2.4 **Customer Responsibilities.** Customer has sole responsibility for Customer's use and operation of the Software including monitoring and verifying input and output data, back-up of input and output data, providing data for any files or tables of such Software, using the Software in a secure environment, preventing security breaches associated with the use of the Software and for maintaining the required Software environment. Customer is responsible for installation of the Software and for converting any data files for use with the Software.

3. Fees.

3.1 **Fees and Payment.** Customer will pay fees as stated in the Order Form.

3.2 **Effect of Late Payment.** All late payments by Customer shall bear interest at a rate of one and one-half percent (1.5%) per month or partial month during which any sums were owed and unpaid, or the highest rate allowed by law, whichever is lower.

3.3 **Collection Costs.** Customer shall reimburse Licensor for any expenses and costs it incurs to collect any amounts due to Licensor under the Agreement, including reasonable attorneys' fees.

4. **Keys and Access.** Licensor shall provide to Customer the Keys, if any, necessary to permit Customer to gain access to the Software for the number of licenses which have been properly licensed to Customer pursuant to the Agreement. All such Keys shall be considered the Confidential Information of Licensor for purposes of Section 6 ("Confidential Information").

5. Right to Audit. Customer shall maintain complete and accurate written records describing: (a) the use and location of all copies of the Software; (b) the number of copies of Software, and machine location for each copy of Software; and (c) any other information which may be reasonably required by Licensor to determine whether Customer is complying with the terms of the Agreement. To ensure compliance with the terms of the Agreement, Licensor shall have the right to conduct an inspection and audit of the facilities of Customer and all the relevant books and records of Customer, and to obtain true and correct photocopies thereof, during regular business hours at Customer's offices and in such a manner as not to interfere unreasonably with Customer's normal business activities. If any such audit should disclose any underpayment of Fees, Customer shall promptly pay Licensor such underpaid amount, together with interest thereon at a rate of one and one-half percent (1.5%) per month or partial month during which each such amount was owed and unpaid, or the highest rate allowed by law, whichever is lower. If the amount of such underpayment exceeds five percent (5%) of amounts otherwise paid, then Customer shall immediately reimburse Licensor for Licensor's reasonable expenses associated with such audit.

6. Confidential Information.

Customer acknowledges that the Software, and other related confidential information provided to Customer contain unique, confidential and secret information of Licensor and are trade secrets and confidential proprietary products of Licensor. Customer agrees at all times to protect and preserve in strict confidence the confidentiality of the Software, and all other related confidential information. Customer further agrees at all times to protect and preserve in strict confidence the terms of the Agreement. Customer agrees not to permit or authorize access to, or disclosure of, the Software, or any other related confidential information or the terms of the Agreement to any person or entity other than employees of Customer who have agreed in a written agreement to be bound by the term of the Agreement and have a "need to know" such information in order to use the Software for the benefit of Customer.

7. Warranty and Disclaimer.

7.1 Software Warranty. Licensor warrants that for a period of thirty (30) days from the effective date of the Order Form pursuant to which Software is licensed to Customer hereunder (the "Warranty Period"), the Software shall meet Licensor's material Specifications for the Software, as described in the Documentation. Each instance in which the Software fails to meet such material Specifications shall be considered an "Error". If Customer reports to Licensor any Errors in such Software during the Warranty Period, and provides such detail as Licensor may reasonably require to permit Licensor to reproduce such Errors, then Licensor, at its expense, shall, as Customer's sole and exclusive remedy, use commercially reasonable efforts to modify or replace the Software, or provide Updates to correct such Errors. Customer agrees to pay Licensor for all personnel time and expense incurred in investigating reported Errors that are not reproducible. This warranty shall not apply to (i) changes or modifications made to the Software other than those made by Licensor, or (ii) any Software used with hardware or third party software except as specified in the Documentation or approved by Licensor in writing.

7.1.1 **Pre-production Releases.** If pre- production (i.e., "alpha" or "beta") releases of Software are provided to Customer, such copies are provided "as-is" without warranty of any kind.

7.2 **Disclaimer.** THE WARRANTIES SET FORTH IN THIS SECTION 7 ("WARRANTY AND DISCLAIMER") STATE LICENSOR'S SOLE AND EXCLUSIVE WARRANTY TO CUSTOMER CONCERNING THE SOFTWARE AND THE EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.1 ("SOFTWAREWARRANTY"), THE SOFTWARE IS PROVIDED STRICTLY "AS IS," AND LICENSOR MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SOFTWARE OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED. THESE WARRANTIES ARE LIMITED AND ARE THE ONLY WARRANTIES MADE BY LICENSOR. LICENSOR DOES NOT WARRANT THAT THE OPERATION OR USE OF THE SOFTWARE WILL BE ERROR FREE OR THAT ALL ERRORS WILL BE CORRECTED OR WILL BE SECURE OR VIRUS FREE.

8. **Indemnities.**

8.1 **Intellectual Property Indemnity.** Licensor agrees to indemnify, defend and hold harmless Customer from any costs, damages, and reasonable attorneys' fees resulting from any claims by third parties that the Software as delivered by Licensor directly infringes any United States patent, copyright or trademark, or misappropriates any trade secret arising under the laws of the states of the United States; provided that Customer: a) gives Licensor prompt written notice of each such claim; b) tenders to Licensor the defense or settlement of each such claim at Licensor's expense; and c) cooperates with Licensor, at Licensor's expense, in defending or settling each such claim. If Licensor receives notice of an alleged infringement, or if Customer's use of the Software shall be prevented by permanent injunction, Licensor may, at its sole option and expense: a) procure for Customer the right to continue using the Software as provided hereunder; b) modify the Software so that it is no longer infringing; or c) replace the Software with computer software of equal or superior functional capability. If none of the foregoing is commercially reasonable, Licensor shall have the right to terminate any affected Software License and require the return of the Software. If Licensor terminates any Software License as described above, Licensor shall refund any prepaid Fees relating to time periods after the termination of the Software License.

8.2 **Intellectual Property Indemnity Limitations.** THE RIGHTS GRANTED TO CUSTOMER UNDER SECTION 8.1 ("INTELLECTUAL PROPERTY INDEMNITY") SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LICENSOR'S SOLE OBLIGATION FOR ANY ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT. LICENSOR SHALL HAVE NO LIABILITY TO CUSTOMER IF ANY ALLEGED INFRINGEMENT OR CLAIM OF INFRINGEMENT IS BASED UPON: (A) ANY MODIFIED

SOFTWARE; (B) ANY CUSTOMER OR THIRD PARTY APPLICATION; (C) ANY THIRD PARTY SOFTWARE INCLUDED WITH LICENSOR'S SOFTWARE (D) USE OF THE SOFTWARE IN CONNECTION OR IN COMBINATION WITH EQUIPMENT, DEVICES, OR SOFTWARE NOT PROVIDED BY LICENSOR (BUT ONLY TO THE EXTENT THAT THE SOFTWARE ALONE WOULD NOT HAVE INFRINGED); (E) PROFESSIONAL SERVICES PROVIDED PURSUANT TO ANY AGREEMENT WITH CUSTOMER IN COMPLIANCE WITH CUSTOMER'S DESIGN REQUIREMENTS OR SPECIFICATIONS; (F) THE USE OF SOFTWARE OTHER THAN AS PERMITTED UNDER THE AGREEMENT OR IN A MANNER FOR WHICH IT WAS NOT INTENDED; OR (G) USE OF OTHER THAN THE MOST CURRENT RELEASE OR VERSION OF THE SOFTWARE (IF SUCH CLAIM WOULD HAVE BEEN PREVENTED BY THE USE OF SUCH RELEASE OR VERSION).

9. Limitation of Liability. LICENSOR SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OR CORRUPTION OF OR SECURITY BREACH REGARDING ANY DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, LAW, EQUITY OR OTHERWISE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENT (INCLUDING FOR ANY CLAIM AND/OR SERIES OF CLAIMS, WHETHER RELATED OR UNRELATED) REGARDLESS OF THE FORM OF THE ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, LAW, EQUITY OR OTHERWISE, SHALL NOT EXCEED THE AGGREGATE FEES PAID BY CUSTOMER TO LICENSOR UNDER THE AGREEMENT DURING THE NINETY DAY (90) PERIOD PRECEDING THE EVENT(S) GIVING RISE TO THE CLAIM (OR TO THE FIRST CLAIM IN A SERIES OF CLAIMS). IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY DAMAGES BASED UPON THE ACCURACY OF THE SOFTWARE OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS. CUSTOMER ACKNOWLEDGES THAT LICENSOR HAS SET ITS FEES, AND ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THE AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE FOREGOING LIMITATION OF LIABILITY IS INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THE AGREEMENT.

10. Technical Support Services.

10.1 Provision of Technical Support Services. During the term of the Order Form, Customer shall be entitled to receive Technical Support Services for the Software as described below and in Schedule A. For purposes of the Agreement, "Technical Support Services" shall consist of:

10.1.1 The right of Customer's Designated Employees to contact Licensor by e-mail to

consult with Licensor regarding Errors in the Software which Errors have been brought to Licensor's attention by Customer's Designated Employees.

10.1.2 The right to have Licensor use commercially reasonable efforts to correct Errors by providing an Update in accordance with Schedule A which is reasonably necessary in Licensor's judgment to correct reproducible Errors which have been brought to Licensor's attention by Customer's Designated Employees.

10.1.3 If, in Licensor's sole discretion, Licensor elects to make available Updates which provide improved or additional functionality to the Software, then the right to obtain from Licensor those Updates for the Software which provide improved or additional functionality.

10.2 Hours and Facilities. During the term of the Order Form, Customer shall be entitled to receive Technical Support Services as described in Section 10.1 ("Provision of Technical Support Services") only between 8:30 a.m. and 5:30 p.m. Eastern Time, Monday through Friday, excluding Licensor holidays. Any Technical Support Services required outside of these hours or dates are subject to Customer entering into a separate agreement with Licensor or at Licensor's option, Customer paying Licensor its standard hourly rates.

10.3 Limitations. Customer must receive Technical Support Services on all of the Software. Licensor shall have no obligation to provide Technical Support Services: (a) for any software provided as a part of Professional Services; (b) any modifications to software by Customer; (c) any non-Licensor computer programs, technology or hardware; (d) any Software which is not within two prior releases of the most recent version or release; (e) Software for which Licensor has provided Updates which have not been applied to the Software; or (f) to resolve an Error that would otherwise be resolved upon the installation of an available Update or release. In addition, the following products and services are not included as a part of Technical Support Services: (a) support of modifications made to the Software; (b) services required during, or as a result of, a relocation of the Software to a new site; (c) Software, services or functionality not provided by Licensor (except as expressly set forth in the Documentation); (d) services required as a result of use of the Software that is not in accordance with the Documentation or the Agreement; (e) the provision of services in locations, languages or times other than those expressly set forth in the Agreement; or (f) requests for Software customization.

Customer acknowledges and agrees that Licensor requires on-line access to Software in order to provide Technical Support Services hereunder.

11. Term and Termination.

11.1 **Term.** The term of the Agreement shall commence on the effective date of the Order Form and shall continue for the term of the Order Form unless and until earlier terminated as set forth herein or in the Order Form.

11.2 **Termination for Material Breach.** Either party may terminate the Agreement immediately upon written notice for the material breach of the other party, which material breach has remained uncured for period of thirty (30) days (if curable) from the date of delivery of written

notice thereof to the breaching party.

11.3 Termination for Bankruptcy. In the event a party makes a general assignment for the benefit of creditors or files a voluntary petition in bankruptcy or petitions for reorganization or arrangement under the bankruptcy laws, or if a petition in bankruptcy is filed against a party, or if a receiver or trustee is appointed for all or any part of the property and assets of a party, the other party may terminate the Agreement.

11.4 Effect. In the event of any termination of the Agreement, all licenses (including, but not limited to, Software Licenses) granted by Licensor under the Agreement shall immediately terminate, and Customer shall immediately return to Licensor all material delivered under the Agreement, including without limitation all copies of the Software, and shall promptly certify to Licensor in writing that Customer has done so.

12. Survival. In the event of any expiration or termination of the Agreement, the provisions of Section 1 (“Definitions”), Section 2.3 (“Additional Restrictions”), Section 3 (“Fees”), Section 5 (“Right to Audit”), Section 6 (“Confidential Information”), Section 7 (“Warranty and Disclaimer”), Section 8 (“Indemnities”), Section 9 (“Limitation of Liability”), Section 11.4 (“Effect”), Section 12 (“Survival”) and Section 13 (“General”) shall survive and shall continue to bind the parties.

13. General.

13.1 Taxes. In addition to any other payments due under the Agreement, Customer agrees to pay, and to indemnify and hold Licensor harmless from, any sales, use, excise, import or export, value added or similar tax or duty not based on Licensor’s net income, including any penalties and interest, as well as any costs associated with the collection or withholding thereof; and all governmental permit fees, license fees and customs and similar fees levied upon the delivery by Licensor of the Software, which Licensor may incur in respect of the Agreement.

13.2 Government Customers. The Software is a “commercial item,” as that term is defined at 48 C.F.R. 2.101, and is “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212.

13.3 Export Control. The parties acknowledge that the manufacture and sale of the Software is subject to the export control laws of the United States of America, including the U.S. Bureau of Export Administration regulations, as amended, and hereby agree to obey any and all such laws.

13.4 Governing Law. The Agreement shall be governed in all respects by the laws of the United States of America and the State of South Carolina without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to the Agreement.

13.5 Forum. All disputes arising under the Agreement shall be brought in the Court of Common Pleas, Pickens County, South Carolina or the Federal District Court, Greenville

Division, District of South Carolina, as permitted by law. The Court of Common Pleas, Pickens County, South Carolina and the Federal District Court, Greenville Division, District of South Carolina shall each have non-exclusive jurisdiction over disputes under the Agreement. Customer consents to the personal jurisdiction of the above courts.

13.6 **Injunctive Relief.** It is understood and agreed that, notwithstanding any other provisions of the Agreement, breach of the provisions of the Agreement by Customer will cause Licensor irreparable damage for which recovery of money damages would be inadequate, and that Licensor shall therefore be entitled to obtain timely injunctive relief to protect Licensor's rights under the Agreement in addition to any and all remedies available at law.

13.7 **Notices.** All notices or reports permitted or required under the Agreement shall be in writing and shall be delivered by personal delivery or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery or five (5) days after deposit in the U.S. mail. Notices shall be sent to the parties at the addresses described on the first page of the Agreement or such other address as either party may designate for itself in writing. All notices to Licensor must be addressed to its President to be effective.

13.8 **No Agency.** Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

13.9 **Force Majeure.** Licensor shall not be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of Licensor.

13.10 **Waiver.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

13.11 **Severability.** In the event that any provision of the Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render the Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

13.12 **Use of Customer's Name.** Customer agrees that Licensor may use Customer's name and may disclose that Customer is a licensee of Licensor products in Licensor advertising, promotion and similar public disclosures with respect to the Software; provided, however, that such advertising, promotion or similar public disclosures shall not indicate, without Customer's written consent, that Customer in any way endorses any Licensor products.

13.13 **Nondisclosure.** Customer promises not to disclose the terms and conditions of the

Agreement to any third party without the prior written consent of Licensor .

13.14 **Headings.** The section headings appearing in the Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect the Agreement.

13.15 **Assignment.** Neither the Agreement nor any rights or obligations of Customer hereunder may be assigned, sold or otherwise transferred by Customer in whole or in part (including by merger, reorganization, consolidation, sale of all or any portion of the assets of Customer or change in control of Customer) without the prior written approval of Licensor. For the purposes of this Section 13.15 (“Assignment”), a change in control means a change in the persons or entities who control fifty percent (50%) or more of the equity securities or voting interest of Customer as of the date of the Agreement. Licensor’s rights and obligations, in whole or in part, under the Agreement may be assigned by Licensor.

13.16 **Third Party Beneficiaries.** Customer acknowledges that third party software is included with the Software and that such third parties are beneficiaries to the Agreement and the Agreement is enforceable by such third parties.

13.17 **Entire Agreement.** The Agreement completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. The Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order furnished by one party to the other, and any additional terms and conditions in any such purchase order shall have no force and effect, notwithstanding the non-furnishing party’s acceptance or execution of such purchase order. The Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of Licensor and Customer by their duly authorized representatives.

Schedule A

TECHNICAL SUPPORT SERVICES

A. Description of Technical Support Services:

1. Responsibilities of Licensor and Customer:

a) Licensor shall provide an e-mail address to Customer's Designated Employees for submission of requests for Technical Support Services during the hours set forth in Section 10.2 ("Hours and Facilities"). These interfaces will be available such that Customer's Designated Employees can submit a request for Technical Support Services to Licensor. Refer to Schedule A, Section 2.b) below for response time guidelines for Technical Support Services requested from Licensor.

b) Customer shall provide Designated Employees who have been trained by Licensor on the Software.

2. Determination of Error Severity and Response Times:

Upon receipt of a request for Technical Support Services from Designated Employees of Customer, Licensor and Customer will agree to the Severity of the Specific Error and associated Licensor Response Times as defined below:

a) Severity:

i) Severity 1 shall mean an Error which critically impacts the Customer's ability to do business. The Error has prevented, in a material respect all access to or use of the Software by Customer in its production environment. There is no work around solution.

ii) Severity 2 shall mean an Error in which a major function of the Software is unusable and significantly impacts Customer's ability to do business. A majority of users of the Software can continue to perform their tasks as necessary.

iii) Severity 3 shall mean an Error caused by the Software that does not seriously affect Customer's business.

iv) Severity 4 shall mean all other Errors not covered above.

b) Response Time Objectives for Acknowledging Errors:

Upon receiving notice from Designated Employees of an Error during the

hours set forth in Section 8.2 ("Hours and Facilities"), Licensor shall acknowledge receipt of such notice. Such acknowledgment shall contain a unique number identifying the particular Error for tracking purposes. Licensor shall provide Customer with a periodic status update for any Error reported by Customer identifying each Error by the tracking number assigned to it by Licensor. Each Error reported by Customer shall remain open until closure is agreed between Licensor and Customer.

Licensor shall use commercially reasonable efforts to acknowledge requests from Customer for Technical Support Services as follows:

- i) Severity 1 -- less than two (2) hours.
- ii) Severity 2 -- less than four (4) hours.
- iii) Severity 3 -- within one (1) business day.
- iv) Severity 4 -- within two (2) business days.

Licensor will be excused from failing to achieve a Severity Level objective above to the extent that Licensor's failure to achieve such Severity Level objective was caused by (i) Customer's failure to correct any non-performance or delay in performing one (1) or more of its responsibilities under the Agreement or (ii) any delay, event or circumstance beyond the reasonable control of Licensor.

3. Error Report Form:

Licensor will define an Error Report Form that is mutually acceptable and which, as revised or replaced from time to time, shall be the means used for the transfer of information defining the Error. Licensor shall provide Customer with an electronic mail address for receipt of above forms. Notwithstanding the foregoing, in case of a Severity 1 or Severity 2 Error attributable to the Software, Customer's Designated Employees may request Technical Support Services through the e-mail address provided by Licensor. Customer shall be provided reasonable access to Licensor's Error database to review the status of Customer's Errors. Customer shall, upon reasonable request by Licensor, obtain and provide to Licensor system information, transaction data, and reproducible test cases as necessary to determine the nature of the Error and to isolate any Errors in the Software.

4. On-Site Assistance:

Upon Customer's request and subject to availability, Licensor may furnish qualified personnel for on-site assistance to Customer to resolve Errors. In such event, Customer shall pay Licensor at its then current time and materials rates for the time of required personnel and reimburse Licensor for reasonable travel and living expenses of such personnel incurred in rendering the requested assistance.

5. Prior Release Support:

Licensor agrees to support two previous releases of any Software, as current under the terms of the Agreement (e.g. upon release of release 2.3 of the Software product, support for release 2.0 and its minor releases, 2.0.1, etc., may be terminated).

6. Miscellaneous Licensor Obligations:

a) Licensor shall provide Customer's Designated Employees initial training in the installation, maintenance, and operation of the Software at Licensor's current standard price for such training. If a major release or Upgrade of any Software is made available for which additional training becomes available, Licensor shall promptly notify Customer, and as requested by Customer, enroll for up to two (2) Designated Employees in the next available training course subject to prior enrollment commitments and at Licensor's current standard price for such training. Such training shall be made available within 30 days of the availability of the new release, if possible.

b) Licensor will make available to Customer all Licensor tools that are generally made available to other customers at no charge. Tools may be for use in deployment, configuration, and performance improvement of the Software.