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5. License Fee. Licensee shall pay the one-time license fee for the Software to Licensor in full upon execution of this Agreement (the “License Fee”). The License Fees and Maintenance Fees are collectively referred to herein as the “Fees”. Licensee shall be responsible for all taxes, federal, state or local, together with all governmental filing related thereto, which arise out of the performance of Licensor hereunder, except for taxes related to Licensor’s net income.

6. Acceptance. The Software shall be deemed accepted by Licensee five (5) days after receipt (the “Acceptance Date”).

7. Licensee Data. For purposes of this Agreement, “Licensee Data” is any data or information owned or maintained by Licensee or its customers that is accessed by or stored on or through use of the Servers. Licensor acknowledges that Licensee is the exclusive owner of Licensee Data. LICENSEE EXPRESSLY RECOGNIZES THAT LICENSOR DOES NOT CREATE, MANIPULATE, CONTROL, OR ENDORSE ANY DATA, OR INFORMATION PROCESSED BY OR USED BY LICENSEE IN CONJUNCTION WITH THE SOFTWARE. Licensee hereby grants to Licensor and Licensor hereby accepts a limited non-exclusive, non-transferable license to access Licensee Data only to the extent necessary for Licensor or its vendors to perform its obligations in furtherance of this Agreement during the Term. Licensor shall have no right, title, or ownership in any Licensee Data. Licensee Data shall be considered Confidential Information of Licensee.

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9.1. Warranty. Licensor warrants and represents to Licensee that: (i) Licensor has the right to license the Software to Licensee without obtaining the consent of any other person; and (ii) the Software will perform substantially in accordance with the documentation

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 - 10.3. Termination for Cause. Either party may terminate this Agreement for cause immediately by written notice to the other upon the occurrence of any of the following: (i) if the other party ceases to do business, or otherwise terminates its business operations; (ii) if the other party becomes insolvent or seeks protection under any bankruptcy, receivership, insolvency or comparable proceeding, or if any such proceeding is instituted against such party; or (iii) if the other party defaults in its obligations under this Agreement and fails to cure the default within thirty (30) days after receipt of written notice of default. If Licensee uses the Products in violation of the provisions of this Agreement, then this Agreement (including the license) shall terminate and Licensee shall discontinue its use immediately, return all copies of the Software in its possession or control to Licensor, but Licensee’s obligation to pay accrued charges and fees shall continue.
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12. Statute of Limitations. Any action resulting from any breach on the part of either party under this Agreement must be commenced within one (1) year after the cause of action has accrued. The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.

13. Force Majeure. Neither party will be liable for any failure or delay in performing services or any other obligation under this Agreement, nor for any damages suffered by the other or an end user by reason of such failure or delay, which is, indirectly or directly, caused by an event beyond such party's foreseeable control including but not limited to strikes, riots, natural catastrophes, terrorist acts, governmental intervention, or other acts of God, or any other causes beyond such Party's reasonable control.

14. Independent Contractor. It is expressly acknowledged and agreed that Licensor is an independent contractor of Licensee. This Agreement shall not be construed or understood to indicate or constitute either party as the partner, joint venturer, employee or employer of the other, nor be understood or construed to indicate or constitute any relationship between the parties other than that of independent contractors. Neither party shall have any authority to bind the other in any respect, or to assume or enter into any obligation for or on behalf of the other. Nothing herein shall be deemed to create an agency relationship between Licensee and Licensor.

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16. Indemnity.

16.1. IP Indemnity. If a third party claims and a court of final authority in a non-appealable decision determines that the original, unaltered, unmodified Software infringes any US trademark, copyright, or trade secret, Licensor will indemnify, defend and hold Licensee harmless (including reasonable attorneys' fees and costs) against such claim at Licensor's expense. Licensee shall promptly notify Licensor in writing of the claim, allow Licensor to control the defense or any related settlement negotiations and

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16.2. Licensee Indemnity. Licensee will defend and indemnify Licensor against all damages and losses (including reasonable legal fees) to the extent arising from a third-party claim alleging that Licensee's Data or Licensee's use of Licensee's Data, violates such third-party's intellectual property rights or otherwise results in harm to a third-party, excluding any damages due to infringement by the Software itself.

17. Confidentiality. For purposes of this Agreement the "Receiving Party" is the party that receives or has access to information of the other party (the "Disclosing Party"). "Confidential Information" means, with respect to the Disclosing Party, information marked as confidential or proprietary, or information that would reasonably be deemed to be confidential based upon circumstances of its disclosure. The Receiving Party shall preserve the confidentiality of the Disclosing Party's Confidential Information with the same degree of care as the Receiving Party uses for its own similar information, but no less than a reasonable standard of care. Both parties agree that: (i) the Receiving Party will not publish or otherwise disclose to third parties any Confidential Information of the Disclosing Party, nor will the Receiving Party use such Confidential Information in any way which might be injurious to the interests of the Disclosing Party; (ii) the Receiving Party will use such Confidential Information for the purpose of fulfilling the Receiving Party's obligations hereunder and for no other purpose; and (iii) all such Confidential Information is, and will remain, the property of the Disclosing Party and upon completion or termination of this Agreement, all such Confidential Information shall be returned to the Disclosing Party. With respect to Confidential Information that is not a trade secret or otherwise subject to protection of U.S. intellectual property laws, this duty of confidentiality shall expire two years following the termination of this Agreement. The foregoing confidentiality obligations will not apply to any information that: (a) was known to the Receiving Party on or before Effective Date without restriction as to use or disclosure; (b) was in the public domain on or before the Effective Date; (c) came into the public domain after the Effective Date through no fault of the Receiving Party; (d) was independently developed solely by the employees of the Receiving Party who have not had access to Confidential Information; or (e) is divulged pursuant to any legal proceeding or otherwise required by law, subject to the Receiving Party giving all reasonable prior notice to the Disclosing Party to allow it to seek protective or other court orders and provided that the Receiving Party uses best efforts to make such disclosure under conditions of confidentiality.

18. Entire Agreement; Applicable Law. This Agreement contains the entire understanding between Licensor and Licensee and supersedes all previous communications, representations, or

agreements, either oral or written, between the parties relating to the subject matter of this Agreement. If there is a conflict between the terms of this Agreement and any link or policy referenced in this Agreement, the terms of this Agreement shall control. This Agreement shall be construed according to and governed by the laws of the State of California without regard to its conflicts of law provisions. Licensee agrees that any disputes arising under this Agreement shall be adjudicated exclusively in Los Angeles, CA.

19. Severability. If any portion of this Agreement will be declared invalid or unenforceable to any extent, the remaining provisions of this Agreement will not be affected and will be enforced to the fullest extent permitted by law.

20. Subcontracting; Assignment. Licensor may subcontract any Maintenance Services provided under this Agreement. Licensee may not assign, whether by operation of law or otherwise, its rights, duties, or obligations under this Agreement to any person or entity without the prior written consent of Licensor.

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