

General Terms and Conditions

This Software License Agreement (the "Agreement") is by and between Avoka (USA), Inc., a California corporation, 15531 Stevens Canyon Road, Suite A, Cupertino, CA 95014-5517 (the "Supplier"); and the licensee (the "Licensee") described on the first page (the "License Metrics") of this Agreement.

THE PARTIES AGREE

1. GRANT OF LICENSE

- (a) Subject to payment by the Licensee of the License Fees in accordance with this Agreement, Supplier grants the Licensee a worldwide, nontransferable, and nonexclusive, right to permit Authorized Users to install and use the Software for Internal Use delivered hereunder according to the terms and conditions of this Agreement in the manner and for the purposes described in the License Metrics and the Documentation, subject to the terms of this Agreement (including, without limitation, the Special Conditions).
- (b) **Per-Forms.** If a Form license type is indicated on the License Metric, then the total number of Active Forms (as such terms are defined in the Documentation) may not exceed the quantity set forth on the License Metric.
- (c) **Per-Recipient.** If a Recipient license type is indicated on the License Metric, then the total number of Recipients that receive Deployed Forms may not exceed the licensed quantity of Recipients. Each person or entity that receives any Deployed Form shall be deemed a unique Recipient unless the identity of that Recipient is known to Licensee prior to Deployment and Licensee has deployed a Form to that Recipient before.
- (d) **Per-CPU.** If a CPU license type is indicated on the License Metric, then the total number of CPUs on the Computer used to operate the Software may not exceed the licensed quantity of CPUs specified in the License Metrics. All CPUs on a Computer on which the Software is installed shall be deemed to operate the Software unless Licensee configures that Computer (using a reliable and verifiable means of hardware or software partitioning) such that the total number of CPUs that actually operate the Software is less than the total number on that Computer; and when a CPU contains more than one processing core, each group of two (2) processing cores, and any remaining unpaired processing core, will be deemed a CPU.
- (e) **Backup and Disaster Recovery.** Licensee may make and install a reasonable number of copies of the Software for backup and archival purposes and permit Authorized Users to use such copies solely in the event that the primary copy has failed or is destroyed, but in no event may Licensee use such copies for other than such backup, archival or recovery purposes. Licensee may also install copies of the Software in a Disaster Recovery Environment for use solely in disaster recovery and not for production, development, evaluation or testing purposes other than to ensure that the Software is capable of replacing the primary usage of the Software in case of a disaster.
- (f) **Documentation.** Licensee may make and distribute copies of the Documentation to Authorized Users solely in connection with use of the Software in accordance with this Agreement, but no more than the amount reasonably necessary for such use. Any permitted copy of the Documentation that Licensee makes must contain the same copyright and other proprietary notices that appear on or in the Documentation.
- (g) **Outsourcing.** Licensee may sublicense use of the Software to a third party outsourcing or facilities management contractor to operate the Software on Licensee's behalf, provided that: (i) Licensee provides Supplier with prior written notice containing the name of the third party outsourcing or facilities management contractor and their physical and electronic address; (ii) Licensee is responsible for ensuring that any such contractor agrees to abide by and fully complies with the terms of this Agreement as they relate to the use of the Software on the same basis as applies to Licensee; (iii) such use is only in relation to Licensee's direct business purposes subject to the limitation set forth in this Agreement; (iv) such use does not represent or constitute an increase in the scope or number of licenses provided under this Agreement; and (v) Licensee shall remain fully liable for any and all acts or omissions by the contractor related to this Agreement.
- (h) **Compliance with License.** Licensee agrees to provide Supplier with a statement, certified to be accurate by an executive officer of Licensee, within thirty (30) days following each anniversary date of this Agreement, or as may be otherwise requested by Supplier, certifying that the Licensee is in compliance with this Agreement including, without limitation, the limitations and variables determining the fees set forth on the License Metrics. Licensee shall maintain complete and accurate records to support and document the use of the Software, if applicable, in accordance with this Agreement for so long as Licensee uses the Software and for a period of two (2) years thereafter. Supplier may, at Supplier's expense, and no more than once every twelve (12) months, appoint an independent third party to verify the usage and number of copies and installations of the Software in use by Licensee. Any such verification shall be conducted upon no less than seven (7) business days notice, during regular business hours at Licensee's offices, and shall not unreasonably interfere with Licensee's business activities. If such verification shows that Licensee is (i) using a greater number of copies of the Software than that legitimately licensed, (ii) is exceeding any applicable License Metric, or (iii) is deploying or using the Software in any way not permitted under this Agreement and which would require additional license fees, Licensee shall pay the applicable fees for such additional usage rights or copies within thirty (30) days of invoice date, with such underpaid fees being the license fees as per Supplier's then current license fee list. If underpaid fees are in excess of ten percent (10%) of the value of the fees paid under this Agreement, then Licensee shall pay such underpaid fees and Supplier's reasonable costs of conducting the verification. This clause 1(f) shall survive expiration or termination of this Agreement for a period of two (2) years.
- (i) **Compliance With Third Party Licenses.**
- Licensee's right to use any Supplemental Software (as hereafter defined) contained in or accompanying the Software is subject to the notifications and limitations pertaining to the Supplemental Software set forth in the third party license directory contained in

Comment [A1]: Bob - Why do we need to say "Concurrently"? We use the term "Active" forms.

Comment [A2]: Check with the Adobe Agreement on this one

the Software installation files (the "Supplemental Software License Files"). Licensee is not permitted to use the Software, or any Supplemental Software included with the Software, unless Licensee is validly licensed to do so and only to the extent explicitly permitted under this Agreement or a separate writing. Without limiting the generality of the foregoing, Licensee shall have no right to use the Software unless Licensee is a licensee of Adobe Systems Incorporated LiveCycle Software and subject to a currently in force Adobe Systems Incorporated Adobe LiveCycle Software License Agreement. Use of some third party materials and services included in or accessed through the Software may be subject to other terms and conditions typically found in a separate license agreement, terms of use, or "Read Me" file located within or near such materials and services, or in the Supplemental Software License Files. Any licensed granted hereunder do not alter any rights and obligations Licensee may have under the terms and conditions governing such third party materials and services provided, however, that the disclaimer of warranty and limitation of liability provisions in this Agreement will apply to all Software provided hereunder.

- (j) **Reservation of Rights.** Supplier hereby reserves all rights not expressly granted to Licensee under this Agreement. Licensee shall have no right to any source code of the Software that is proprietary to Supplier.

2. INSTALLATION

- (a) The Software will be delivered to Licensee electronically or from Supplier's file transfer site.
- (b) The Licensee must make available for installation and operation of the Software hardware which is reasonably necessary to operate the Software and, if applicable, any subsequent version of the Software described on the License Metrics.
- (c) If the Licensee fails to comply with its obligations under Clause 2(b) before the Installation Date, then the Licensee must pay Supplier for any installation services performed by Supplier at Supplier's then current rates. Otherwise, subject to Clause 2(b), the installation services performed by Supplier will be performed at no additional cost to the Licensee.
- (d) Subject to the Licensee complying with its obligations under Clause 2(b), Supplier must install the Software on the Licensee's hardware at the Site on or around the Installation Date.
- (e) The Licensee must give Supplier's employees reasonable access to the Installation Site during normal business hours for the installation of the Software in accordance with this Clause 2 (Installation).

3. COPYING, USE RESTRICTIONS AND SUBLICENSING

The Licensee must not, and must not permit any other person to:

- (a) copy (except as permitted by Clause 1(e)), modify, enhance, adapt, or create derivative works of, the Software without the prior written consent of Supplier;
- (b) unless otherwise permitted by law, reverse engineer or reverse compile, or allow or cause a third party to reverse engineer or reverse compile, the whole or any part of the Software;
- (c) sublicense any of its rights under this Agreement or permit third parties to use or modify the Software;
- (d) provide the Software either directly or indirectly to any third party except as may be specifically permitted in this Agreement;
- (e) use the Software on hardware or CPUs other than as set forth on the License Metrics;
- (f) use the Software in the operation of a service bureau, either for a fee or gratuitously or otherwise;
- (g) rent, lease, lend or grant other rights in the Software including rights on a membership or subscription basis, or otherwise using the Software on behalf of third parties; or
- (g) except to the extent allowed by law, use any intellectual property owned by Supplier and contained in the Software to create any software or other technology which has features or functionality the same as or similar to the features and functionality of the Software.

Comment [A3]: Need to discuss

4. SUPPORT SERVICES

Subject to payment by the Licensee of the applicable fees, Supplier shall exercise commercially reasonable efforts to provide to Licensee the support services for the Software in accordance with the attached Support Schedule.

5. INTELLECTUAL PROPERTY RIGHTS

- (a) The Licensee acknowledges that it has no rights of ownership in the Software.
- (b) As against Licensee, all right, title and interest in or to the Software, together with all modifications or enhancements to, or adaptations or derivative works of, the Software (whether created by Supplier or any other person) are the property of, or vest on creation in, Supplier. Licensee hereby assigns to Supplier all Licensee' right, title and interest in and to such modifications or enhancements to, or adaptations or derivative works of, the Software.
- (c) The Licensee must execute all documents and do all things which are reasonably necessary to assign to Supplier any intellectual property rights in any modifications or enhancements to, or adaptations or derivative works of, the Software.
- (d) This Agreement applies to the Software as modified or altered.

6. CONFIDENTIALITY

- (a) During the term of this Agreement, Licensee may come into possession of Supplier's Confidential Information. For the purposes of this Agreement, "Confidential Information" means any information that Supplier designates as confidential or which Licensee knows or has reason to know is confidential. Without limiting the foregoing, Confidential Information includes the terms of this Agreement and other business licensing terms, the Software, the Documentation, database design, financial, business and technical plans, strategies, and roadmaps, inventions, diagrams, schematics, new products, code, pricing information, services or

technology. Confidential Information does not include information which, as evidenced by Licensee's written records: (i) is already known by Licensee, without any obligation of confidentiality, prior to the time such information is disclosed to Licensee; or (ii) is independently developed by Licensee without reference to Supplier's Confidential Information. Licensee may disclose Confidential Information to the extent required to be disclosed by a court or governmental agency pursuant to a statute, regulation or valid order; provided that Licensee first notifies Supplier and gives it the opportunity to seek a protective order or similar administrative remedy, or to contest such required disclosure. Either party may disclose the terms of this Agreement to any of its advisors, potential successors, or potential purchasers of its stock not intended for issuance to the public, if the recipient is under an obligation of confidentiality.

- (b) Licensee will hold and maintain Supplier's Confidential Information in strict confidence and will not use such information except as permitted under this Agreement. Licensee will use the same precautions to prevent disclosure to third parties of such information as it uses with its own confidential information, but in no case less than commercially reasonable efforts. Any Confidential Information supplied by Supplier or obtained by Licensee, as permitted hereunder, may only be used by Licensee to exercise the rights expressly granted to Licensee under this Agreement. Licensee may disclose Supplier's Confidential Information only to its employees and independent contractors who have a need to know such information and are under confidentiality obligations at least as protective of Supplier's Confidential Information as the provisions contained in this Clause 6.
- (c) Upon the earlier of Supplier's request or the termination of this Agreement, Licensee will promptly return or destroy all Confidential Information and related materials in its possession and discontinue all further use of the Confidential Information. Upon Supplier's request, Licensee will promptly certify that such action has been taken.
- (d) Licensee agrees (i) not to alter or remove any identification of any patent, copyright, trademark or other proprietary rights notice which indicates the ownership of any part of the Confidential Information, and (ii) to notify Supplier of the circumstances surrounding any possession, use or knowledge of the Confidential Information by any person or entity other than those authorized by this Agreement. Licensee shall not disclose to Supplier any personally identifiable information or other personal information about individuals contained in Licensee's records (including, without limitation, names, addresses, social security numbers, and credit card and other financial information).

7. INTELLECTUAL PROPERTY INDEMNIFICATION

- (a) Supplier warrants that:
 - (i) the Software does not infringe any copyright of any third party in the United States or any third party patent registered in the United States prior to the date of this Agreement; and
 - (ii) to its knowledge, without investigation, the Software does not infringe any copyright of any third party in jurisdictions outside the United States or any third party patent registered in those jurisdictions prior to the date of this Agreement.
- (b) Subject to Clauses 7(c), 7(d), or 7(e), Supplier shall defend, indemnify, and hold harmless the Licensee against any loss, costs and expenses directly arising from:
 - (i) any proceedings brought by a third party against the Licensee, determining that the Licensee's use of the Software in accordance with this Agreement constitutes an infringement of a third party's copyright in the United States or trade mark or patent registered in the United States prior to the date of this Agreement; or
 - (ii) any proceedings brought by a third party against the Licensee, directly arising from a breach of the warranty in clause 7(a)(ii), to the extent such loss, costs and expenses are incurred by the Licensee after the date of the date of this Agreement.
- (c) Supplier will only be liable under Clause 7(b) if the Licensee:
 - (i) notifies Supplier as soon as practicable of the infringement or alleged infringement;
 - (ii) gives Supplier the option to conduct the defence of the claim, including negotiations for settlement or compromise before the institution of legal proceedings;
 - (iii) provides Supplier with reasonable assistance in conducting the defence of the claim;
 - (iv) permits Supplier to modify, alter or substitute the Software at its own expense, to render it non-infringing; and
 - (v) authorizes Supplier to procure for the Licensee the authority to continue the use and possession of the Software.
- (d) Supplier will not be liable to indemnify the Licensee under paragraph (b) if the infringement arises from:
 - (i) modification or alteration of the Software without the prior consent of Supplier or by a person other than Supplier;
 - (ii) use of the Software with software, hardware, or technology, other than that described in the Documentation;
 - (iii) use of the then current version of the Software; or
 - (iv) any transaction entered into by the Licensee in breach of this Agreement or relating to the Software without Supplier's prior written consent.
- (e) In connection with any such claim, or if Supplier believes, in good faith, the Software may become the subject of such a claim, Supplier may, at its option and expense:
 - (i) modify the Software so that it becomes non-infringing;
 - (ii) obtain for the Licensee a license to continue to use the Software; or
 - (iii) refund all fees paid to Licensee for the license of the Software and terminate this Agreement without further liability.

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- (f) The Licensee shall defend, indemnify and hold harmless Supplier against any loss, cost, expense or demand, whether direct or indirect, arising out of the claim by a third party alleging infringement of that person's Intellectual Property Rights if:
- (i) the claim arises from any event specified in Clause 7(d);
 - (ii) the ability of Supplier to defend a claim has been prejudiced by the failure of the Licensee to comply with its obligations under Clause 7(c); or
 - (iii) information provided to Supplier by the Licensee to enable Supplier to develop, modify or alter the Software encroaches on the Intellectual Property Rights of a third party.
- (g) THIS CLAUSE 7 (WARRANTIES AND INDEMNIFICATION) STATES SUPPLIER'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

8. LIMITED WARRANTY AND DISCLAIMERS

- (a) Supplier warrants that, for a period of thirty (30) days following the date of this Agreement (the "Warranty Period"), the Software will perform in accordance with the Documentation in all material respects. In the event of any breach of this warranty, Licensee shall notify Supplier no later than the end of the Warranty Period, which shall respond promptly confirming receipt of the notification of the breach and confirmation that the breach is being investigated by Supplier. Licensee shall acknowledge Supplier's confirmation, shall provide any available details that may reasonably assist Supplier to reproduce the failure and provide a cure, and shall provide reasonable assistance, at Supplier's expense, in connection with the elimination, by modification, workaround, or otherwise, of the breach. If Supplier and Licensee mutually and reasonably determine that a reproducible breach exists in the Software, Supplier's sole and exclusive obligation, and Licensee's sole and exclusive remedy, will be, at Supplier's option, (i) for Supplier to use commercially reasonable efforts to promptly eliminate, by modification, workaround, or otherwise, the breach; or (ii) for Supplier to refund the fees paid to Supplier by Licensee under this Agreement and terminate this Agreement without any further liability to Supplier.
- (b) Supplier does not warrant that the Software will operate uninterrupted or error-free. The warranties above shall not apply to Software that has been (i) improperly installed by other than Supplier; (ii) used other than in accordance with the Documentation; (iii) subject to a defect caused by Licensee's hardware or equipment. In addition, the warranties above shall not apply to any release of the Software that is other than the currently supported release. In addition, Supplier shall have no obligation for any errors in performance of the Software that are not reproducible by Supplier, or for any notifications of a failure by Licensee to which Licensee does not provide the acknowledgment or assistance described in Clause 8(a). Licensee shall be deemed to have accepted the Software if Licensee fails to provide any notice of any Discrepancy during the Warranty Period.
- (c) THE WARRANTIES CONTAINED IN CLAUSES 7 AND 8 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. SUPPLIER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR TITLE, OR WARRANTIES ARISING OUT OF CONDUCT OR TRADE PRACTICE WITH RESPECT TO THE SOFTWARE. THE SUPPLEMENTAL SOFTWARE IS SUBJECT TO SUCH DISCLAIMERS AS ARE PROVIDED BY ITS RESPECTIVE OWNERS WHICH ARE INCORPORATED INTO THIS ATTACHMENT. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.
- (d) IN NO EVENT SHALL SUPPLIER HAVE ANY LIABILITY TO LICENSEE OR ANY THIRD PARTIES FOR ANY LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, ARISING OUT OF OR RELATING TO LICENSEE'S USE OF, OR INABILITY TO USE, THE SOFTWARE OR ANY SUPPORT SERVICES, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY INCLUDING, WITHOUT LIMITATION, TORT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF WARRANTY, AND WHETHER OR NOT SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT. WITHOUT LIMITATION OF THE FOREGOING, THE TOTAL LIABILITY OF SUPPLIER FOR ANY AND ALL CLAIMS AGAINST SUPPLIER UNDER THIS AGREEMENT SHALL NOT EXCEED THE LESSER OF (i) THE TOTAL FEES PAID BY LICENSEE TO SUPPLIER UNDER THIS AGREEMENT FOR LICENSE OF THE SOFTWARE, EXCLUSIVE OF FEES FOR SUPPORT, OR (ii) LICENSEE'S ACTUAL OUT-OF-POCKET LOSSES. SUPPLIER'S LIABILITY UNDER THIS AGREEMENT IS DIMINISHED TO THE EXTENT THAT THE LICENSEE'S ACTS OR OMISSIONS (OR THOSE OF A THIRD PARTY) CONTRIBUTE TO OR CAUSE THE LOSS OR LIABILITY.

9. FEES

- (a) The Licensee must pay the License Fees to Supplier on the Commencement Date.
- (b) The Licensee must pay Supplier for any travel expenses (such as airfares and accommodation) and any other incidental expenses incurred by Supplier in installing the Software in accordance with Clause 2 (Installation).
- (c) Amounts paid by the Licensee under this Agreement are not refundable under any circumstances and are exclusive of all Taxes. Except for Taxes based on Supplier's income, all Taxes must be paid by the Licensee.

10. TERM AND TERMINATION

- (a) This Agreement will commence on the Commencement Date and will continue until terminated in accordance with its terms.

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- (b) Either party may terminate this Agreement if the other party breaches a provision of the Agreement and the breach has not been remedied within 30 days after receiving notice given by the non-defaulting party specifying the breach and requiring its rectification.
- (c) Notwithstanding Clause 10(b), Supplier may terminate this Agreement immediately on notice to the Licensee if the Licensee:
- (i) has used the Software in breach of this Agreement;
 - (ii) fails to make any payments due under this Agreement;
 - (iii) to the extent allowed by law, if (A) Licensee files a voluntary petition in bankruptcy or otherwise seeks protection under any law for the protection of debtors; (B) has a proceeding instituted against it under any bankruptcy law which is not dismissed within sixty (60) days; (C) is adjudged as bankrupt; (D) has a court assume jurisdiction of its assets under a reorganization act; (E) has a trustee or receiver appointed by a court for all or a substantial portion of its assets; (F) dissolves, or suspends or ceases to do business; (G) makes an assignment of its assets for the benefit of its creditors, or (H) becomes, threatens or resolves to become or is in jeopardy of becoming subject to, any of the actions described in (A) through (H); or
 - (iv) being a natural person, dies.
- (d) Termination of this Agreement is without prejudice to any other right or remedy available to the parties.
- (e) On termination of this Agreement the Licensee must immediately:
- (i) cease using and return to Supplier all copies of the Software, Documentation, and Supplier Confidential Information; and
 - (ii) certify in writing to Supplier that it has returned all copies of the Software, Documentation, and Supplier Confidential Information.
- (f) Clauses 1(h), and 5 through 12 shall survive any termination of this Agreement.

11. U.S. Government Users.

The Software and Documentation are "Commercial Item(s)," as that term is defined at 48 C.F.R. Section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. Section 12.212 or 48 C.F.R. Sections 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights are reserved under the copyright laws of the United States. Avoka (USA), Inc., 15531 Stevens Canyon Road, Suite A, Cupertino, CA 95014-5517 USA.

12. GENERAL

12.1 Licensee Indemnification. Licensee agrees to defend, indemnify, and hold Supplier and its suppliers harmless from and against any claims or lawsuits including, without limitation, reasonable attorneys' fees and court costs that arise or result from the use of the Software, or creation, distribution, Deployment, or use of any Forms, provide that Supplier gives Licensee prompt written notice of any such claim, tenders to Licensee the defense or settlement of such a claim at Licensee's expense, and cooperates with Licensee, at Licensee's expense, in defending or settling such claim.

12.2 Assignment

The Licensee may not assign its rights under this Agreement without the prior consent of Supplier which may be withheld in the exercise of the Supplier's sole discretion. Any change in control of Licensee shall constitute an assignment. Supplier may assign its rights under this Agreement at any time by giving notice of such assignment to the Licensee.

12.3 Notices

A notice, consent, or any other communication under this Agreement must be in writing and must be delivered to the address of the addressee, or sent by recognized next business day courier to the address of the addressee or sent by facsimile to the facsimile number of the addressee. If the addressee is the Licensee, the address shall be the address set forth on the License Metrics. If the address is the Supplier, the address shall be 15531 Stevens Canyon Road, Suite A, Cupertino, CA 95014-5517. Either party may change the address to which notice shall be sent by delivery of written notice to the other party in accordance with the provisions of this Clause 12.2. A notice, consent or any other communication is deemed to be received on the earlier of:

- (a) actual receipt;
- (b) if a letter, three days after posting; and
- (c) if a facsimile, at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

12.4 Severability

If any provision of this Agreement is unenforceable in a given circumstance, the parties intend that the remainder of this Agreement and application of the provision in other circumstances continue without impairment.

12.5 Entire agreement

This Agreement constitutes the entire Agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter.

12.6 Cumulative rights

The rights, powers and remedies of a party under this Agreement are cumulative with the rights, powers or remedies provided by law independently of this Agreement.

12.7 Exercise of rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy.

12.8 Waiver and amendment

A provision or a right under this Agreement may not be waived except in writing signed by the party granting the waiver, or amended except in writing signed by the parties specifically stating an intent to amend this Agreement.

12.9 Approvals and consents

A party may give or withhold its approval or consent conditionally or unconditionally in its discretion unless this Agreement states otherwise.

12.10 Indemnities

Each indemnity in this Agreement is a continuing indemnity, separate and independent from the other obligations of the parties and survives termination and completion of this Agreement.

12.11 Further assurances

Each party must do all things necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

12.12 Arbitration

The parties shall use reasonable good faith efforts to resolve any dispute relating to the subject matter of this Agreement by negotiations or mediation. If negotiation and mediation fail, any party may submit any dispute relating to or arising out of this Agreement to final and binding arbitration pursuant to the JAMS Streamlined Arbitration Rules if the amount in controversy is less than \$250,000 (exclusive of interest and attorney fees) and the Comprehensive Arbitration Rules otherwise. A single, neutral arbitrator shall conduct any arbitration under the Streamlined Arbitration Rules. Three neutral arbitrators, appointed in accordance with the JAMS commercial rules, shall conduct any arbitration under the Comprehensive Arbitration Rules. Mediation and arbitration shall take place in Santa Clara County, California. The arbitrators shall have the power to determine what disputes between the parties are the proper subjects of arbitration. The parties shall be entitled only to limited discovery at the discretion of the arbitrator. At the request of any party, the arbitrators, attorneys, parties to the arbitration, witnesses, experts, court reporters, or other persons present at the arbitration shall agree in writing to maintain the strict confidentiality of the arbitration proceedings. A person who has the authority to enter into a binding agreement to settle the dispute without the approval or consent of any person not at the meeting shall represent each party at each negotiation, mediation, and arbitration meeting. The arbitrator shall have the power, but not the obligation, to require a party to pay the cost of the mediation and arbitration proceedings payable by the other party and may require the party to pay all or part of the attorney fees of the other party. Otherwise, the parties shall share the costs of mediation and arbitration equally. There shall be no arbitration of any claim that would otherwise be barred by a statute of limitations if the claim were to be brought in a court of law. Arbitrators shall not have the power to award punitive, consequential, indirect, or special damages. The award of an arbitrator shall be enforceable according to the applicable provisions of the California Code of Civil Procedure, sections 1280 et seq. Notwithstanding the foregoing, a party may apply to either a court of competent jurisdiction for prejudgment remedies and emergency relief pending final determination of a claim through arbitration in accordance with this Section.

12.13 Governing law and jurisdiction

This Agreement is governed by the laws of the State of California without regard to its conflicts of laws provisions or the United Nations Convention on the International Sale of Goods. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and state courts located in the County of Santa Clara, State of California.

12.14 Currency

All currency is expressed in United States Dollars.

12.15 Export Rules

Licensee agrees that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions, or regulations (collectively the "Export Laws"). In addition, if the Software is identified as an export controlled item under the Export Laws, Licensee represents and warrants that licensee is not a citizen of, or located within, an embargoed or otherwise restricted nation (including without limitation Iran, Syria, Sudan, Cuba and North Korea) and that Licensee is not otherwise prohibited under the Export Laws from receiving the Software. All rights to install and use the Software are granted on condition that such rights are forfeited if Licensee fails to comply with the terms of this Agreement.

13. DEFINITIONS AND INTERPRETATION

13.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this Software License and Support Agreement, including the attached Support Schedule.

Authorized User means an employee of Licensee which requires the use of the Software in order to perform its obligations to Licensee.

Commencement Date means the commencement date specified in Item 4 of the License Metrics.

Computer means one or more central processing units in a hardware device (including a Server) that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.

CPU means central processing unit.

Deploy or Deployed means to deliver or otherwise make available, directly or indirectly, by any means, a Form to one or more persons or entities including Recipients. A Form that has been Deployed will be deemed to remain Deployed until it is no longer available for distribution.

Disaster Recovery Environment means Licensee's technical environment designed solely to allow Licensee to respond to an interruption in service due to an event beyond Licensee's control that creates an inability on Licensee's part to provide critical business functions for a material period of time.

Documentation means the user manuals and/or technical publications as applicable, supplied in connection with validly licensed Software relating to the installation, use and administration of the Software.

Form means a discrete document created by using the Software to which specific information can be input for delivery or data storage. To the extent that a document includes content contained in other electronic files that have been processed by the Software but are separately Deployed as Forms, then each such electronic file shall also be deemed a unique Form.

Installation Date means the installation date specified in the License Metrics.

Intellectual Property Rights means any and all intellectual and industrial property rights through the world including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks, designs and circuit layouts whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of such rights and includes all renewals and extensions.

Internal Use means use by Licensee solely for its internal purpose in furtherance of Licensee's business, and not for the benefit of any third party including, without limitation, any affiliate of Licensee.

License Fees means those fees specified in the License Metrics.

License Metrics means the information contained in the first page of this Agreement.

Object Code with respect to particular software means the machine readable version in binary form of the code for that software which can be processed and manipulated by a computer to produce intended results.

Recipient means a person or entity to which Licensee directly or indirectly Deploys Forms.

Server means a Computer designed or configured for access by multiple users through a network.

Site means the site specified in Item 6 of the License Metrics.

Software means the Object Code version of the software specified in Item 2 of the License Metrics, and any Amendments, Revisions, and Updates (as such terms are defined in the attached Support Schedule) delivered as part of the Support Services.

Special Conditions means any special conditions specified in clause 14 of this Agreement.

Supplemental Software means the third party software listed in the Supplemental Software License Files.

Tax means any tax or charge levied by any governmental body.

13.2 Interpretation

(a) In this Agreement unless the context otherwise requires:

- (i) words importing the singular include the plural and vice versa;
- (ii) words which are gender neutral or gender specific include each gender;
- (iii) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (iv) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a Government Agency;
- (v) a reference to a thing (including, but not limited to, a chose-in-action or other right) includes a part of that thing;
- (vi) a reference to a clause, party, schedule or attachment is a reference to a clause of this Agreement, and a party, schedule or attachment to, this Agreement and a reference to this Agreement includes a schedule and attachment to this Agreement;
- (vii) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (viii) a reference to a party to a document includes that party's successors and permitted assigns.

(b) Headings are for convenience only and do not affect the interpretation of this Agreement.

(c) This Agreement may not be construed adversely to a party just because that party prepared it.

14. Special conditions

[insert if applicable]

AVOKA TECHNOLOGIES PTY LIMITED
Software License and Support Agreement

SUPPORT SCHEDULE

1. Levels of Support

(a) Supplier offers the following Support:

Support Level	Business
Support fee	For the initial period of 12 months from the Commencement Date, 20% of the License Fees specified in Item 3 of the License Metrics, thereafter increased by 6% each year.
Hours of Support	9am to 6pm Monday to Friday
Number of nominated support contacts	2
Response Time	

2. Provision of Support Services

- (a) Subject to payment by the Licensee of the Support Fee in accordance with this Schedule, Supplier must provide Support Services for the Software during the Hours of Support.
- (b) If the Licensee requests Supplier to provide Support Services outside the Hours of Support, Supplier may agree to provide such services to the Licensee at Supplier's then current hourly rates.
- (c) Any time that Supplier spends in providing Support Services is to be calculated in minimum units of 30 minutes.
- (d) Supplier shall provide Support Services for the current release of the Software, and the immediately prior release. A release shall be indicated upon any change in the number to the right of the decimal point of the version number.

3. Amendments

Supplier may from time to time make Amendments, Revisions and Updates to the Software available to the Licensee, at no additional charge to the Licensee, but is under no obligation to do so.

4. New Releases

Nothing in this Schedule requires Supplier to provide to the Licensee any New Releases of the Software, but the Licensee may from time to time make such New Releases available to the Licensee, subject to the terms of current maintenance and support arrangements between the Supplier and the Licensee. Licensee shall be required to install all such New Releases.

5. Payment of fees

- (a) The Licensee must pay the Support Fee annually in advance, initially on the Commencement Date (being the same date as License Fees are payable), and thereafter on each anniversary of that date.
- (b) Supplier may invoice the Licensee annually in advance with payment due on each anniversary of the Commencement Date.
- (c) Supplier may invoice the Licensee monthly in arrears for any other fees that the Licensee must pay under this Schedule, and the Licensee must pay such fees within 30 days of receipt of such invoice.

6. Term and termination

- (a) This Schedule commences on the Commencement Date, and continues annually thereafter unless terminated in accordance with this Schedule or the License and Support Agreement is terminated.
- (b) Either Supplier or the Licensee may terminate this Schedule (but not the Agreement) effective upon an anniversary of the Commencement Date by giving the other party prior written notice not less than 30 days before that anniversary.
- (b) For the avoidance of doubt, this Schedule will terminate and be of no further force and effect upon any termination or expiry of the License and Support Agreement.

7. Order of priority

In the event of any conflict between the terms of this Schedule and the General Terms and Conditions, the terms of the Support Agreement will prevail to the extent of that inconsistency.

8. Definitions

(a) In this Schedule, unless the context otherwise requires:

Amendments means fixes, patches and changes made to the Software by Supplier from time to time.

Fault means any error, defect or non-conformity to published specifications detected in the Software.

Hours of Support means the hours of support specified in clause 1(a) of this Schedule, excluding any recognized public holidays in the State of California. Any times specified in those hours of support are to be calculated as the applicable time in San Francisco, California.

Support Fee means the fee specified as such in clause 1(a) of this Schedule.

Support Services means the following services:

- (i) assistance by telephone, email, fax, remote support and/or on-site visits, as reasonably determined by Supplier, to correct Faults and remedy problems in the operation and performance of the Software;
- (ii) supply and installation of Amendments and Revisions and Updates for the Software upon general commercial availability; and
- (iii) assistance with the correction of reported Faults, and the release of Amendments and Revisions and Updates.

Maximum Support Hours means the maximum number of hours during the term of this Schedule in which Supplier is required to provide Support Services, as specified in Clause 1(a) of this Schedule, excluding any Support Services that Supplier provides to the Licensee under Clause 2(b) of this Schedule.

New Release means software that forms part of the Product Center™ software suite as licensed to the Licensee and which has been produced primarily to extend, alter or improve that Software by providing additional functionality or performance enhancement (whether or not bugs and errors are also corrected). A New Release shall be indicated upon any change in the number to the right of the decimal point of the version number from the immediately prior release.

Revisions and Updates are new releases of the Software which:

- (i) incorporate previously issued amendments and enhancements; and/or
- (ii) include software changes necessary to support new hardware modules; and
- (iii) are given one or more of a new version, patch or revision number, whilst retaining the previous release number.

Support Schedule means this Support Schedule.

Agreement means the Software License and Support Agreement of which this Schedule forms part.

Support Level means the level of support that the Licensee has elected to receive under this Schedule, as specified in the License Metrics and varied from time to time in accordance with Clause 1(b) of this Schedule.

(b) Any terms that are defined in the General Terms and Conditions which are not defined in this Schedule, have the meaning given to them in the General Terms and Conditions.