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(c) Licensor shall have no liability for any claim of patent, copyright or trade secret infringement that is based on (i) the use of other than the latest version of the Software, if such infringement could have been avoided by the use of the latest version, (ii) the use or combination of the Software with software, hardware or other materials not recommended by Licensor, provided such infringement would not have arisen but for such use or combination, or (iii) use of the Software in a manner other than that for which it was designed or contemplated as evidenced by Licensor's Documentation, or (iv) any unauthorized modification by You or a third party of the Software, or (v) any compliance with designs, plans or specifications furnished by You or on Your behalf.

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**9. TERMINATION.** (a) The Agreement will be in effect as of the date You accept this Agreement, or as of the date You first install or Use the Software, whichever first occurs. Where You have paid a license fee for the Software, this Agreement shall continue for the term of the license as set forth in the purchase order for which the license fee was paid unless in the event of a breach of any term or condition herein. Either party may, at its option, terminate this Agreement in the event of a breach by the other party. Such termination may be effected only through a written notice to the breaching party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Agreement shall terminate in the event that such cure is not made within such thirty (30)-day period.

(b) Upon any termination of this Agreement, the license granted under this Agreement shall immediately cease, and You (i) shall immediately discontinue all use of the Software, as well as any use of Licensor's confidential information; (ii) shall delete any copies of the Software and Licensor's confidential information from Your computer storage or any other of Your media, including, but not limited to, online and off-line libraries; (iii) shall return to Licensor or, at Your option, destroy, all copies of the Software and any of Licensor's confidential information remaining in tangible form; and (iv) shall promptly pay to Licensor all amounts due and payable pursuant to any license fee.

(c) Sections 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, together with any accrued payment obligations, shall survive expiration or termination of this Agreement for any reason.

**10. GENERAL PROVISIONS.** This Agreement will be governed by the laws of the State of Massachusetts, without regard to, or application of, rules or principles regarding conflicts of law or to the United Nations Convention on the International Sale of Goods. The state and federal courts located in the

Commonwealth of Massachusetts shall have sole and exclusive jurisdiction over any disputes arising under this Agreement, and You agree to submit to the personal jurisdiction of such courts. You acknowledge that Licensor will have the right to seek an injunction if necessary to prevent a breach of Your obligations hereunder. If any provision of this Agreement is held to be unenforceable, that provision will be disregarded for purposes of the dispute or other circumstance giving rise to such finding, and the remaining provisions will remain in full force. In the event that Licensor prevails in any proceeding or lawsuit brought by either party in connection with this Agreement, Licensor will be entitled to receive its costs, expert witness fees and reasonable attorney's fees, including costs and fees on appeal. The failure of Licensor to require Your performance of any provision in this Agreement shall not affect Licensor's full right to require such performance at any time thereafter; nor shall the waiver by Licensor of any breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

**11. ASSIGNMENT.** You may assign this Agreement only if You assign all of Your rights hereunder, only if You thereafter destroy or transfer to the assignee all full or partial copies of the Software in Your possession, and only if the assignee agrees to assume and to be bound by Your obligations under this Agreement; otherwise any attempted or purported assignment by You shall be null and void.

**12. SEVERABILITY.** If any provision hereof shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid and enforceable, and the legality, validity and enforceability of all other provisions of this Agreement shall not be affected thereby.

**13. WAIVER.** No delay or failure by either party to exercise or enforce at any time any right or provision hereof shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver or amendment to this Agreement shall be effective only if it is in writing (by non-preprinted agreement or terms and conditions) and signed by an authorized representative of You and Licensor. No single waiver shall constitute a continuing or subsequent waiver.

**14. CONFLICTING TERMS AND CONDITIONS.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN THE PARTIES IN RELATION TO THE SUBJECT MATTER OF THIS AGREEMENT. ACCEPTANCE BY LICENSOR OF ANY PURCHASE ORDER PLACED BY YOU IS CONDITIONED ON YOUR ASSENT TO THE TERMS SET FORTH HEREIN. SHIPMENT OF SOFTWARE TO YOU SHALL NOT IMPLY LICENSOR'S ACCEPTANCE OF TERMS IN ANY PRE-PRINTED OR OTHER PURCHASE ORDER FOR THE SOFTWARE OR DOCUMENTATION THAT CONFLICTS WITH THIS AGREEMENT OR WITH LICENSOR'S QUOTATION. SUCH CONFLICTING TERMS SHALL BE OF NO FORCE OR EFFECT, UNLESS SO AGREED BY THE PARTIES IN WRITING.