

Q1 LABS END USER LICENSE AGREEMENT
TERMS AND CONDITIONS

1. IMPORTANT NOTICE

PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT (THE "AGREEMENT") CAREFULLY BEFORE PROCEEDING TO USE THE ENCLOSED Q1 LABS SOFTWARE PROGRAMS AND THE ASSOCIATED DOCUMENTATION (THE "SOFTWARE PROGRAMS").

Q1 LABS, INC. ("Q1 LABS") HAS DEVELOPED AND OWNS THE SOFTWARE PROGRAMS. THE SOFTWARE PROGRAMS ARE COPYRIGHTED AND THEIR USE IS LICENSED (NOT SOLD) TO YOU (EITHER AS AN INDIVIDUAL, CORPORATION, OR OTHER ENTITY) AS A "LICENSEE." BY USING THE SOFTWARE PROGRAMS OR ACKNOWLEDGING "I ACCEPT" BELOW, LICENSEE ACCEPTS AND AGREES TO THE TERMS OF THIS AGREEMENT. IF LICENSEE DOES NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, LICENSEE SHOULD NOT USE THE SOFTWARE PROGRAMS. THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT CONCERNING THE SOFTWARE PROGRAMS BETWEEN LICENSEE AND Q1 LABS.

2. LICENSE OF SOFTWARE PROGRAMS

2.1 License Grant

Subject to the terms and conditions of this Agreement, including the payment of license fees, Q1 Labs grants to Licensee a non-exclusive, nontransferable license to execute and run the Software Programs, in object code form only, solely for internal business purposes.

2.2 Restrictions on Use

Licensee acknowledges that the Software Programs and their structure, organization, and source code constitute valuable trade secrets of Q1 Labs and its suppliers. Except as expressly permitted, Licensee agrees that Licensee shall not, and shall not permit any third party, to (i) modify, adapt, alter, translate, or create derivative works from the Software Programs; (ii) merge the Software Programs with other software; (iii) sublicense, export, sell, provide for service bureau use, lease, rent, loan, or otherwise transfer the Software Programs to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software Programs; (v) remove or alter any copyright notices or other notices included in the Software Programs; (vi) otherwise use or copy the Software Programs except as expressly permitted; or (vii) use the Software Programs to conduct any competitive benchmarking tests or analysis. Without limiting the foregoing, the restrictions on use of the Software Programs set forth in this Section shall apply to any Software Programs supplied to Q1 Labs by third parties and included with the Software Programs. For purposes of this Section 2, the term "use" shall mean the right to run, execute and display the Software Programs in executable form only.

2.3 Third-Party Software

The Software Programs are accompanied by third-party software that is licensed under its own terms. A list of this third-party software can be found on the media distribution CD with the Software Programs. Licensee agrees to comply with the terms of these third-party licenses.

3. SOFTWARE PROGRAMS LICENSE FEES

Software Programs license fees are as set forth in Q1 Labs' then current applicable price list. All fees are exclusive of all taxes and other charges, including but not limited to, shipping, handling, insurance, sales, use, value-added or other similar taxes, duties or assessments.

4. PAYMENT TERMS

Subject to credit approval, terms of payment are at Q1 Labs' sole option, (i) by an irrevocable letter of credit issued prior to shipment in an amount and from a bank or other financial institution as designated by or reasonably acceptable to Q1 Labs, (ii) by payment in advance via wire transfer prior to shipment or (iii) net thirty (30) days from the date of Q1 Labs' invoice in US Dollars.

A late payment charge of one and one-half percent (1½%) per month, or the maximum allowed by law, shall be assessed on all overdue amounts. Licensee shall pay Q1 Labs' costs of collection including, but not limited to attorneys' fees. Except for taxes based on Q1 Labs' net income, Licensee shall pay any applicable sales, use, value-added or other similar taxes, duties or assessments, or amounts levied in lieu of such taxes, now or later imposed.

5. LIMITED WARRANTY

The Software Programs are provided "as is". Q1 Labs warrants that during the warranty period as defined below (the "Warranty Period"), the media shall substantially conform to Q1 Labs' then current published user documentation and any third-party equipment (the "Equipment") obtained by Q1 Labs and provided to Licensee shall conform to such third-party's then current published documentation. The Warranty Period is sixty (60) days from shipment for media and sixty (60) days from shipment for Equipment. To the extent legally permissible, Q1 Labs shall pass through to Licensee all warranties provided to Q1 Labs by its third-party vendors. Q1 Labs shall incur no liability under this limited warranty if Licensee fails to provide Q1 Labs with written notice of the alleged defect during the applicable Warranty Period. Q1 Labs' limited warranty services are as forth below.

5.1 Media Warranty Services

Q1 Labs will replace any defective media as contemplated herein during the Warranty Period.

5.2 Equipment Warranty Services

Q1 Labs will, at its sole option, repair or replace any defective Equipment as contemplated herein during the Warranty Period.

5.3 Exclusion of Limited Warranty

Q1 Labs shall incur no liability under this limited warranty if the alleged defect is due to causes not within Q1 Labs' reasonable control, including alteration, modification or abuse of the media or Equipment. The limited warranty is contingent upon the media and Equipment being used in accordance with the terms of the applicable specifications.

5.4 Disclaimer

Q1 Labs' sole obligation and Licensee's sole remedy pursuant to the limited warranty shall be the remedies described in this Section 5. Any warranty services provided by Q1 Labs shall not modify or extend the original limited warranty with respect to the media or Equipment. LICENSEE ACKNOWLEDGES THAT NO REFUNDS SHALL BE DUE OR OWED LICENSEE WITH RESPECT TO ANY SOFTWARE PROGRAMS, MEDIA OR EQUIPMENT CONTEMPLATED BY THIS LIMITED WARRANTY SECTION. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION, THE SOFTWARE PROGRAMS, MEDIA OR EQUIPMENT ARE PROVIDED "AS IS," AND Q1 LABS DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SOFTWARE PROGRAMS, MEDIA OR EQUIPMENT AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER WARRANTIES WHATSOEVER, INCLUDING THOSE ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. IN NO EVENT DOES Q1 LABS WARRANT THAT THE OPERATION OF ANY SOFTWARE PROGRAMS OR PROVISION OF ANY SERVICES SHALL BE UNINTERRUPTED OR ERROR FREE.

6. PATENT AND COPYRIGHT INDEMNIFICATION

Q1 Labs will defend at its own expense any action against Licensee brought by a third party to the extent that the action is based upon a claim that the Software Programs infringe any U.S. patents, trademarks or copyrights of a third party, and Q1 Labs will pay those costs and damages finally awarded against Licensee in any such action that are specifically attributable to such claim or those costs and damages agreed to in a settlement of such action. The foregoing obligations are conditioned on Licensee notifying Q1 Labs promptly in writing of such action; giving Q1 Labs sole control of the defense thereof and any related settlement negotiations; and cooperating, at Q1 Labs' request and expense in such defense. If the Software Programs become, or in Q1 Labs' opinion are likely to become, the subject of an infringement claim, Q1 Labs may, at its sole option and expense, either (i) procure for Licensee the right to continue using the Software Programs, (ii) replace or modify the Software Programs so that they become non-infringing, or (iii) accept return of the Software Programs, terminate this Agreement, in whole or in part, as appropriate, upon written notice to Licensee and refund Licensee the fees paid for such Software Programs as depreciated upon such termination, computed according to a

sixty (60) month straight-line amortization schedule. Notwithstanding the foregoing, Q1 Labs will have no obligation under this Section or otherwise with respect to any infringement claim based upon any use of the Software Programs not in accordance with this Agreement, any use of the Software Programs in combination with equipment, software, or data not supplied by Q1 Labs if such infringement would have been avoided but for the combination with other equipment, software or data, any use of any release of the Software Programs other than the most current release made available to Licensee, any modification of the Software Programs by any person other than Q1 Labs or its authorized agents or subcontractors, or the use of the Software Programs after receiving notice that the Software Programs infringe the intellectual property rights of a third party. THIS SECTION STATES Q1 LABS' ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY FOR ANY CLAIMS OR ALLEGATIONS OF INFRINGEMENT. Any and all claims for indemnification or infringement defense under this Section 6 must be brought before the first anniversary of the date of termination or expiration of this Agreement.

7. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOSS OF INCOME, DATA, GOODWILL, USE OR INFORMATION, DOWNTIME OR COSTS OF SUBSTITUTE SOFTWARE PROGRAMS OR EQUIPMENT), WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. Q1 LABS' AGGREGATE LIABILITY TO LICENSEE FOR LOSSES, DAMAGES, COSTS, EXPENSES AND OTHER AMOUNTS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SOFTWARE PROGRAMS, REGARDLESS OF THEORY OF LIABILITY, SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY LICENSEE TO Q1 LABS UNDER THIS AGREEMENT FOR THE RELEVANT SOFTWARE PROGRAM GIVING RISE TO SUCH LIABILITY, AS DEPRECIATED, COMPUTED ACCORDING TO A SIXTY (60) MONTH STRAIGHT-LINE AMORTIZATION SCHEDULE BEGINNING ON THE FIRST USE OF SUCH SOFTWARE PROGRAM.

8. Q1 LABS INTELLECTUAL PROPERTY AND MARKS

Q1 Labs does not grant and Licensee acknowledges that it shall have no right, license or interest in any of the patents, copyrights, trademarks, or trade secrets owned, used or claimed now or in the future by Q1 Labs. All applicable rights to such patents, copyrights, trademarks, and trade secrets are and will remain the exclusive property of Q1 Labs or its suppliers.

9. TERMINATION

Q1 Labs may immediately terminate this Agreement in the event of the material breach by Licensee of any term or condition of this Agreement. Upon termination, Licensee shall (i) cease all use of the Software Programs; (ii) remove the Software Programs from Licensee's system(s); and (iii) destroy all copies of the Software Programs.

10. EXPORT CONTROL

Licensee shall not commit any act which would, directly or indirectly, violate any United States law or other law, regulation, treaty or agreement relating to the export or re-export of the Software Programs.

11. U.S. GOVERNMENT END USERS

If Licensee is a branch or agency of the United States Government, the following provision applies. The Software Programs and documentation are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are provided to the Government for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-3 (JUN 1995).

12. PUBLICITY

Licensee agrees that Q1 Labs may use Licensee's name (i) in any Q1 Labs' licensee lists; (ii) on Q1 Labs' website; and (iii) on other promotional materials. Licensee further agrees to participate in a press release with Q1 Labs, provided that Licensee may approve the content of such press release, which approval by Licensee shall not be unreasonably withheld or delayed.

13. GENERAL

13.1 Assignment

This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Neither party shall have the right to assign or otherwise transfer its rights or delegate its duties under this Agreement without the express written consent of the other party. Notwithstanding the forgoing, either party may, without such consent, assign this Agreement in the event of a merger, consolidation or the sale of all or substantially all of that party's assets or stock and Q1 Labs may assign monies due or becoming due for financial purposes only.

13.2 Governing Law

This Agreement shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, USA, without regard to its choice of law provisions or policies. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

13.3 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement. The prohibition on or unenforceability of any provision in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

13.4 Maintenance Services

In consideration for the maintenance services to be performed with respect to the Software Programs by Q1 Labs, as described on the attached Schedule 1, Licensee agrees to pay Q1 Labs (i) eighteen percent (18%) of Software Programs' list price for a one (1) year maintenance services term; (ii) sixteen and two/one hundredths percent (16.2%) for a two (2) year maintenance services term; and (iii) fifteen and two/one hundredths percent (15.3%) for a three (3) year maintenance services term. Maintenance services will commence on delivery of the Software Programs and shall continue for the initial maintenance services term of one (1) year. The maintenance services term shall automatically renew for additional one (1) year periods on each anniversary of the then current term, unless either party provides written notice of termination not less than sixty (60) days prior to such anniversary date.

13.5 Professional Services

In the event Q1 Labs performs professional services for Licensee, such professional services shall be pursuant to the terms and conditions as set forth in the attached Schedule 2. Professional services fees, time of performance, customizations, training and consulting services shall be set forth on a Scope of Work ("SOW") or other documents provided by Q1 Labs and subject to the terms and conditions of Schedule 2, attached hereto. In the event that Licensee has paid fees for certain professional services and has delayed and/or not authorized the performance of such professional services by Q1 Labs for a period of twelve (12) months, Q1 Labs upon the expiration of such twelve (12) month period shall have no obligation to perform such professional services or to provide any refund to Licensee, at Q1 Labs' sole option..

SCHEDULE 1

Q1 LABS GENERAL TERMS AND CONDITIONS OF MAINTENANCE SUPPORT SERVICES PROGRAM

1. DEFINITIONS

"Error" shall mean a material failure of the Software Programs to conform to the then current published user documentation that is reproducible by Q1 Labs on unmodified Software Programs. Errors do not include and Q1 Labs will have no responsibility to provide Services in any of the following circumstances which adversely impact the operation of the Software Programs or the ability of Q1 Labs to provide the Services: (i) the Software Programs have been altered or modified in any manner by any person or entity other than Q1 Labs; (ii) the Software Programs have been used outside the scope of the license granted under this Agreement; (iii) there is a failure of the computer hardware, operating system and/or other software utilized by Licensee; (iv) the Software Programs have been installed or operated other than in accordance with Q1 Labs' installation and operation instructions, including, without limitation, on computer hardware, operating systems or in an environment other than those for which it was designed; (v) Licensee is not using a Supported Version of the Software Programs; or (vi) the Software Programs have been subject an accident, negligence or misuse.

"Release" shall mean an updated version of the Software Programs with a limited number of functional enhancements and improvements, as determined by Q1 Labs.

"Services" means the provision by Q1 Labs of:

(a) Updates, if any, and appropriate documentation, including release notes, additions or amendments to the administrative guide and the user's guide for such Updates;

(b) telephone or email assistance with respect to the Software Programs licensed by Licensee, within the hours of service as elected and paid for by Licensee, including (i) clarification of functions and features of the Software Programs, (ii) clarification of documentation pertaining to the Software Programs, (iii) guidance in the operation of the Software Programs and (iv) Error verification, analysis and correction.

"Standard Business Hours" means 8:00 AM through 6:00 PM eastern time (excluding holidays and weekends).

"Supported Version" means the then current and immediately preceding Release of the Software Programs.

"Update" means a version of the applicable Software Programs containing minor functional enhancements, modifications, extensions, or Error corrections. Updates shall not include any new or major functional enhancements to the applicable Software Programs, as determined by Q1 Labs in accordance with its standard Maintenance Support Services Program.

2. SCOPE OF SERVICES

For so long as Licensee is current in the payment of all fees and not otherwise in breach of any obligation under this Agreement, Licensee is entitled to receive Services. Such Services with respect to Equipment shall be either repair or replacement of such Equipment, at Q1 Labs' sole option, and in accordance with Q1 Lab's then current Maintenance Support Services Program with respect to Equipment eligible for such Services. Q1 Labs shall use its reasonable efforts to correct any Error in the Software Programs as provided herein and in accordance with its then current technical support escalation procedures. Upon identification of any Error, Licensee shall promptly notify Q1 Labs of such Error and provide Q1 Labs a description of the Error as well as any pertinent log file and configuration information as requested by Q1 Labs' technical support personnel. Q1 Labs will use commercially reasonable efforts to correct Errors in copies of the Software Programs. Licensee may obtain Updates through delivery of a machine readable copy pursuant to instructions contained in the Update notification, by downloading the Update from Q1 Labs' FTP site or such other method as may be mutually agreed to by the parties.

3. HOURS OF TELEPHONE AND/OR EMAIL ASSISTANCE SERVICES

3.1 Standard. Telephone and email assistance Services shall be provided to Licensee by Q1 Labs during Q1 Labs' Standard Business Hours.

3.2 Premium. Licensees who have purchased Premium Services at an additional charge, can contact support personnel on a 24X7 basis via message pager for Q1 Labs designated Priority-1 situations only outside Standard Business Hours.

4. EXCLUSIONS

4.1 Eligible Software Programs. Q1 Labs shall not be responsible for correcting any Errors not attributable to Q1 Labs. Errors attributable to Q1 Labs shall be those that are reproducible by Q1 Labs solely on unmodified Software Programs. Without limiting the foregoing, Q1 Labs is not required to provide any Services for customizations to the Software Programs, the operating environment for the Software Programs or versions of the Software Programs that are not Supported Versions.

4.2 Additional Services. Services for any ineligible Software Programs, any earlier versions of the Software Programs, customized Software Programs or for other Services not covered under the Maintenance Support Services Program may be obtained at Q1 Labs' then-current rates, terms and conditions for Professional Services pursuant to the Q1 Labs Professional Services Program.

5. LICENSEE RESPONSIBILITIES

- 5.1 **Training and Use of Software Programs.** Licensee shall properly train its personnel in, the use and application of the Software Programs and the equipment on which the Software Programs are loaded or operating. Licensee shall provide adequate supervision, control and management of the use of the Software Programs. In addition, Licensee shall implement procedures for the protection of its information and the implementation of backup procedures in the event of Errors or malfunction of the Software Programs or the equipment upon which the Software Programs are loaded or operating.
- 5.2 **Reporting.** Licensee shall document and promptly report to Q1 Labs all Errors or malfunctions of the Software Programs. Q1 Labs will provide Licensee with a trouble ticket number which shall be used to track the status of each issue. Licensee shall use all reasonable efforts to perform the procedures for the rectification of such Errors or malfunctions after such procedures have been provided by Q1 Labs to Licensee. Q1 Labs reserves the right to close the trouble ticket if Licensee does not provide appropriate information or status to Q1 Labs within thirty (30) calendar days of receiving new Software Programs and/or a work-around or fails to respond to a request for additional information. Licensee shall maintain a current backup copy of all Software Programs and applicable data.
- 5.3 **Designated Contacts.** Licensee shall appoint two (2) individuals within Licensee's organization to serve as primary contacts between Licensee and Q1 Labs and to receive support through Q1 Labs' telephone support center. All of Licensee's inquiries with respect to Services shall be initiated exclusively through these two (2) primary contacts.

6. LIMITED SERVICES WARRANTY AND DISCLAIMER

During any Services term and subject to the payment of all Services fees, Q1 Labs will use commercially reasonable efforts to perform Services under its Maintenance Support Services Program and this Schedule 1. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ALL SERVICES ARE PROVIDED "AS IS." Q1 LABS DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SOFTWARE PROGRAMS OR SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. Q1 LABS DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE PROGRAMS OR PROVISION OF ANY SERVICES SHALL BE UNINTERRUPTED OR ERROR FREE.

7. SOLE REMEDY AND LIMITATION OF LIABILITY

LICENSEE'S SOLE REMEDY IN THE EVENT OF A BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 6 AND Q1 LABS' SOLE LIABILITY UNDER THIS SCHEDULE 1 IS TERMINATION BY LICENSEE UPON THIRTY (30) DAYS PRIOR WRITTEN NOTICE OF THE THEN-CURRENT SERVICES TERM AND A REFUND OF ANY PREPAID SERVICES FEES, PRO-RATED FOR THE REMAINDER OF THE APPLICABLE SERVICES TERM. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY RISK, WHICH IS SET FORTH IN THIS SECTION.

SCHEDULE 2

Q1 LABS PROFESSIONAL SERVICES TERMS AND CONDITIONS

1. SCOPE OF WORK

Subject to the terms and conditions of the Agreement and this Schedule 2, Licensee may, from to time, retain Q1 Labs to perform certain temporary implementation, customization, training and other consulting services (the "Professional Services"). Professional Services fees, time of performance, a description of the Professional Services and other applicable information shall be set forth on a Scope of Work ("SOW"), a written Q1 Labs quotation or other documents provided by Q1 Labs. Licensee may issue a purchase order for Professional Services and such purchase order shall be subject to acceptance by Q1 Labs and governed by the terms and conditions in this Agreement, this Schedule 2 and any other documents provided by Q1 Labs. Q1 Labs shall provide such Professional Services directly to Licensee.

2. PROFESSIONAL SERVICES FEES

Professional Services fees shall be as set forth in the applicable SOW or Q1 Labs' quotation. All fees are at Q1 Labs' then current rates and are subject to change without notice.

3. TERMS OF PAYMENT

Terms of payment are net thirty (30) days from the date of Q1 Labs' invoice. All Professional Services fees are exclusive of all taxes and other charges, including but not limited to sales, use, value-added or other similar taxes, duties or assessments.

A late payment charge of one and one-half percent (1½%) per month, or the maximum allowed by law, shall be assessed on all overdue amounts. Licensee shall pay Q1 Labs' costs of collection including, but not limited to attorneys' fees.

4. OWNERSHIP

Q1 Labs shall retain all right, title to and interest in Q1 Labs' Software Programs, in source or object code, derivatives thereof and its methodologies, work processes, work flow and other intellectual property rights.

5. CONFIDENTIALITY

During the course of its performance of Professional Services, Q1 Labs may learn information that is confidential and proprietary to Licensee. Such information shall be in tangible form and shall be clearly marked by Licensee as "proprietary" or "confidential". Q1 Labs agrees not disclose such information to any third party without the written consent of Licensee and shall use such information solely with respect to its performance of Professional Services.

Licensee warrants and represents that it rightfully owns such information and/or has the right to disclose such information to Q1 Labs and shall indemnify and hold harmless Q1 Labs for any breach of the forgoing warranty. Upon the expiration or termination of the applicable SOW, Q1 Labs shall return to Licensee all such information and any copies thereof.

6. PROFESSIONAL SERVICES TERM AND TERMINATION

The applicable term for the performance of Professional Services shall be as set forth in the applicable SOW. Any extension of such term shall be mutually agreed upon in writing by the parties hereto and shall be subject to additional fees and charges at Q1 Labs' then current rates at the sole option of Q1 Labs. Q1 Labs may immediately terminate any SOW in the event of the material breach by Licensee of any term or condition of the Agreement, an SOW or any other document provided by Q1 Labs. In the event of such termination, Q1 Labs shall cease its performance of all Professional Services and provide to Licensee any work product, whether or not completed, and other documents related to its performance of Professional Services. All payments for such Professional Services shall be immediately due and payable by Licensee upon the effective date of termination. Any expiration or termination of an SOW shall not modify or alter any rights of a party hereto which arose prior to such expiration or termination.

7. LIMITED WARRANTY

Q1 Labs warrants that it shall perform the Professional Services in a professional and workmanlike manner.

7.1 Remedy. In the event of a breach of the foregoing limited warranty by Q1 Labs during the term of an SOW, Q1 Labs shall re-perform such Professional Services at no additional charge to Licensee. Q1 Labs shall incur no liability under this limited warranty if Licensee fails to provide Q1 Labs with written notice of the alleged breach or after the expiration of the term of the applicable SOW.

7.2 Disclaimer. Q1 Labs' sole obligation and Licensee's sole remedy pursuant to the limited warranty shall be the remedies described in this Section 7. Any warranty services provided by Q1 Labs shall not modify or extend the original limited warranty with respect to the Professional Services. LICENSEE ACKNOWLEDGES THAT NO REFUNDS SHALL BE DUE OR OWED LICENSEE WITH RESPECT TO ANY PROFESSIONAL SERVICES CONTEMPLATED BY THIS LIMITED WARRANTY SECTION. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION, THE PROFESSIONAL SERVICES ARE PROVIDED "AS IS," AND Q1 LABS DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PROFESSIONAL SERVICES AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER WARRANTIES WHATSOEVER, INCLUDING THOSE ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE.

8. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOSS OF INCOME, DATA, GOODWILL, USE OR INFORMATION, DOWNTIME OR COSTS OF SUBSTITUTE PROFESSIONAL SERVICES), WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. Q1 LABS' AGGREGATE LIABILITY TO LICENSEE FOR LOSSES, DAMAGES, COSTS, EXPENSES AND OTHER AMOUNTS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROFESSIONAL SERVICES, REGARDLESS OF THEORY OF LIABILITY, SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY LICENSEE TO Q1 LABS UNDER THIS AGREEMENT FOR THE RELEVANT PROFESSIONAL SERVICES GIVING RISE TO SUCH LIABILITY.

9. Q1 LABS INTELLECTUAL PROPERTY AND MARKS

Q1 Labs does not grant and Licensee acknowledges that it shall have no right, license or interest in any of the patents, copyrights, trademarks, or trade secrets owned, used or claimed now or in the future by Q1 Labs. All applicable rights to such patents, copyrights, trademarks, and trade secrets are and will remain the exclusive property of Q1 Labs or its suppliers.

10. NON-SOLICITATION

During the term of any SOW and for a period of twelve (12) months after its expiration or termination, Licensee shall not directly or indirectly solicit for hire any employee of Q1 Labs who had direct involvement with the Professional Services provided pursuant to such SOW.

11. INDEPENDENT CONTRACTOR

Each party hereto shall be considered an independent contractor and the Agreement or the SOW shall not create any relationship of partner, principal and agent, joint venture or the like. Each party shall be responsible for the payment of taxes, benefits and the like with respect to its employees.