

SOFTWARE LICENSE TERMS AND CONDITIONS

These Software License Terms and Conditions (herein, “**Agreement**”) is a valid and legally binding agreement between Eclipses. Inc., a Delaware corporation having a principal place of business at 33 Broad Street 11th Floor Boston, Mass. 02109 (“**Licensor**”), and you (“**Licensee**” or “**you**”). YOU UNDERSTAND THAT YOU MUST ENTER INTO THIS AGREEMENT IN ORDER TO USE OR COPY THE SOFTWARE AS LICENSED IN SECTION 2 HEREUNDER. YOU FURTHER UNDERSTAND AND ACKNOWLEDGE THAT BY USING THE SOFTWARE AND/OR CLICKING THE “ACCEPT” BUTTON IF PROVIDED, YOU ARE AGREEING TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND THAT YOU ARE ENTERING INTO A LEGALLY BINDING CONTRACT. You further agree that the date on which you first use the Software and/or click the applicable “ACCEPT” button shall be the effective date of this Agreement (“**Effective Date**”).

Each of Licensor and Licensee may be referred to herein as a “**Party**” and, collectively, as the “**Parties**”).

WHEREAS Licensor owns and licenses certain computer Software (as defined below) that may be implemented in both Software as a Service (“**SaaS**”) and non-SaaS components, to include the Eclipses “**MTE**” computer program and ancillary files and Documentation;

WHEREAS Licensee desires to obtain a license, and Licensor desires to grant a license in the Software to Licensee for use in Licensee's business under the terms and conditions set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Definitions.

- 1.1 “**Affiliate**” means any entity that directly or indirectly is controlled by the subject entity. For purposes of this definition, “**control**” means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of an entity.
- 1.2 “**Confidential Information**” means any and all trade secrets, proprietary or confidential information of a Party and includes, without limitation, any information, software, material, data or business, financial, operational, customer, vendor, and other information disclosed by a Party (hereinafter the “**Disclosing Party**”) to a receiving Party (hereinafter the “**Recipient**”), whether disclosed in writing, verbally, electronically, graphically or any other tangible form and identified/marked as confidential at the time of disclosure. Confidential Information will not include information that the Recipient can prove: (a) was already in the Recipient’s possession on a non-confidential basis prior to receipt from the Disclosing Party; (b) was independently developed by the Recipient; (c) was obtained from a third party who had the right to disclose such information to the Recipient; or (d) was or became generally available to the public other than as a result of disclosure by the Recipient.
- 1.3 “**End User(s)**” means the licensed users: i) that directly use the Software for the benefit of an Enterprise Licensee (e.g., employees), or ii) that indirectly use the Software as integrated within Licensee Products distributed by an OEM Licensee (e.g., consumer users).
- 1.4 “**Enterprise Licensee(s)**” means a licensee that uses and accesses the Software for its own internal business purposes, but not for the purposes of developing any Licensee Product.
- 1.5 “**OEM Licensee(s)**” means a licensee that uses and accesses the Software, and its Software Development Kit (“**SDK**”) and Application Programming Interfaces (“**APIs**”) for the purposes of developing Licensee Product(s).
- 1.6 “**Licensee Data**” means all electronic data or information of Licensee input, submitted, generated, processed, stored, transmitted or output by Licensee in connection with Licensee’s use of the Software.

- 1.7 **“Licensee Product(s)”** means any software products that an OEM Licensee may develop and license to End Users, and that use, access, integrate or incorporate any component of the Software.
- 1.8 **“Documentation”** means the specifications and instructions that describe the operation and functionality of the Software, as may be updated by Licensor from time to time.
- 1.9 **“Intellectual Property”** or **“IP”** means any intellectual property, including but not limited to, inventions, patents, trade secrets, databases, know-how, trademarks, works of authorship, copyrights, processes, methods, designs, software (object code and source code), algorithms, databases, mask works and designs, test reports, test data and results thereof, and all applications and registrations related to any of the foregoing anywhere in the world.
- 1.10 **“Software”** shall mean the software program(s) and/or SaaS products licensed hereunder, in object code form, their database structure/schema, SDK, APIs, related Documentation and all Upgrades, all owned by Licensor.
- 1.11 **“Upgrade”** or **“Upgrades”** shall mean any new versions, fixes, enhancements, service packs or other revisions of the Software as may be commercially released in the future at Licensor’s sole discretion.

2. Software.

2.1 License Grant.

- 2.1.1 Enterprise License Grant. Subject to the provisions of this Agreement, if Licensee is an Enterprise Licensee, then Licensor hereby grants to Licensee, and Licensee accepts from Licensor, a limited, world-wide, non-exclusive, non-sublicensable, non-transferable (except as permitted herein) and revocable license to use and access the Software, and to permit its End Users to use and access such Software.
- 2.1.2 OEM License Grant. Subject to the provisions of this Agreement, if Licensee is an OEM Licensee then Licensor hereby grants to Licensee, and Licensee accepts from Licensor, a limited, world-wide, non-exclusive, sublicensable, non-transferable (except as permitted herein) and revocable license: i) to use and access the Software, ii) to create Licensee Products that use such Software via its documented SDK and APIs, and iii) to permit End Users of Licensee Products to use and access such Software and as distributed with such Licensee Products. Pursuant to the foregoing license grant, Licensee may integrate, copy, bundle and distribute the Software with Licensee Products and sublicense Licensee’s End Users with the right to use such Software only within such Licensee Products and solely for such End Users’ internal business purposes. To the extent that Licensee sublicenses the Software to its End Users, Licensee shall require such End Users to enter into a written agreement restricting the scope of such sublicense and protecting Licensor’s rights in the Software in a manner that is materially equivalent to this Agreement. For the avoidance of doubt, sublicenses granted hereunder that permit End Users to use the Software as integrated into Licensee Products shall be coterminous with the End User license agreements for such Licensee Products.

Restrictions. Except as expressly permitted in this Agreement, Licensee shall not (i) copy, reproduce, distribute, modify, damage, disassemble, decompile, reverse engineer, or create derivative works of the Software or any portion thereof; (ii) breach, disable, tamper with, develop, use, or attempt to develop or use any workaround for any security measure provided by Licensor in conjunction with the Software; (iii) use the Software or any part thereof in a way that infringes, misappropriates, or otherwise violates a Licensor’s or a third party’s IP or personal rights; (iv) alter or tamper with any information associated with the Software, including but not limited to any copyright notices of the Licensor; (v) use the Software in violation of (intentionally or unintentionally) any applicable local, state, national or international law or regulation, including, but not limited to, U.S. export laws and (vi) make the Software available to any third party or use the Software for purposes of processing the data of any third party.

3. Payments.

- 3.1 Fees. The fees to be paid to Licensor by Licensee in consideration of the Software licenses granted herein provided hereunder shall be paid by Licensee in advance when ordering the Software (**“License Fees”**).

- 3.2 Billing. Licensors will bill Licensee in advance for all License Fees. Licensee agrees to remit payment of the License Fees in U.S. dollars prior to any access or use of the Software.
- 3.3 Taxes. All taxes, duties, fees and other governmental charges of any kind (excluding taxes based on the gross revenues or net income of Licensors) arising out of or relating to the sales of Software licenses shall be borne by Licensee.

4. Term and Termination.

- 4.1 Term. This Agreement shall commence on the Effective Date and shall continue unless terminated pursuant to its terms or by mutual written agreement of the Parties (the “**Term**”).
- 4.2 Termination for Breach. Either Party may terminate this Agreement upon written notice if the other Party materially breaches this Agreement, and fails to correct such breach within thirty (30) days following written notice specifying the breach. For the avoidance of doubt, Licensee’s failure to pay any Fees when due shall be considered to be a material breach and Licensors may immediately terminate this Agreement upon such failure.
- 4.3 Termination for Bankruptcy. Either Party may terminate this Agreement at any time if the other Party enters into insolvency or bankruptcy, or is unable to pay its debts as they become due, or a trustee or receiver or the equivalent is appointed for the Party, or proceedings are instituted against the Party relating to dissolution, liquidation, winding up, bankruptcy or insolvency, if such proceedings are not terminated or discharged within thirty (30) calendar days.
- 4.4 Effect of Termination. All rights in the Software granted to Licensee hereunder shall cease upon any expiration or termination of this Agreement. Upon such expiration or termination, Licensee shall immediately pay all undisputed Fees and shall cease any and all use of the Software. Within ten (10) days after any such expiration or termination, Licensee shall return or destroy all copies of the Software and any other related Licensors Confidential Information or proprietary materials in its possession or control; and certify to Licensors in writing that it no longer retains any copies of such Software or proprietary materials.
- 4.5 Survival. The following Sections shall survive any termination or expiration of this Agreement: 1, 0, 4.4, 5, 6.3, 7, 8, 9, 10, 11.1, and 12.

5. PROPRIETARY RIGHTS

- 5.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, Licensors and/or its licensors own, retain and reserve all rights, title and interest in and to the Software, including all related IP rights. No rights are granted to Licensee hereunder other than as expressly set forth herein.
- 5.2 Licensee Products. If Licensee is an OEM Licensee, then the Parties understand and acknowledge that Licensee is licensed hereunder to create Licensee Products that access and use the Software via its documented SDK and APIs. For the avoidance of doubt, such Licensee Products shall not be considered to be derivative works of the Software under this Agreement. As between Licensee and Licensors, Licensee shall own all right title and interest in any Licensee Products (excluding the Software) including all IP rights, notwithstanding the use of the Software within such Licensee Products. Upon request, Licensee shall provide to Licensors a current list and description of all Licensee Products that include or integrate any component of the Software. Licensee shall report such use to Licensors in writing as requested and describe any such pairing for purposes of auditing and properly allocating activation codes as required. Such reporting shall commence within thirty (30) days following Licensors providing the Software and at least one activation code to Licensee for a permitted licensed use.

- 5.3 Licensee Data. As between Licensor and Licensee, Licensee shall own any applicable IP rights, title, and interest in and to any and all Licensee Data processed by the Software, or otherwise created in the normal operation of any Licensee Product making use of or otherwise integrating the Software. Licensee grants Licensor a fully paid-up, non-exclusive, perpetual, worldwide, and irrevocable license to access, use, store, copy, process, modify and distribute any Licensee Data, with no right to sub-license, for the limited purpose of determining and improving the effectiveness of the Software. Licensee further agrees that Licensor may generate and use deidentified and aggregate statistical data derived from Licensee Data for any commercial purposes so long as publication and dissemination of such statistical data are anonymous with respect to the origination or subjects of such Licensee Data.

6. Representations and Warranties.

- 6.1 Mutual Warranties. Each Party represents and warrants the following: (a) the Party's execution, delivery and performance of this Agreement: (i) are authorized by all necessary corporate action, (ii) do not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any material agreement to which the Party or any of its assets may be subject and (iii) are not subject to the consent or approval of any third party; (b) this Agreement is the valid and binding obligation of the representing Party, enforceable against such Party in accordance with its terms; and (c) such Party is not subject to any pending or threatened litigation or governmental action which could interfere with such Party's performance of its obligations hereunder.
- 6.2 Performance Warranty. Licensor represents and warrants that the Software will perform substantially in accordance with its Documentation for a period of ninety (90) days after the date on which the Software is provided to Licensee hereunder. In the event that Licensee discovers a material malfunction in the Software in contravention of this warranty, as Licensee's sole remedy Licensor agrees to promptly use commercially reasonable efforts to correct, cure or otherwise remedy, at Licensor's option, such malfunction at Licensor's sole expense. Licensee agrees to cooperate and work closely with Licensor in a prompt and reasonable manner in connection with Licensor's correction efforts.
- 6.3 DISCLAIMER. EXCEPT AS EXPRESSLY WARRANTED HEREIN, LICENSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED IN THE SOFTWARE OR SERVICES, AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE, WILL FUNCTION WITHOUT INTERRUPTION, OR THAT ANY DEFECTS WILL BE CORRECTED; NOR DOES LICENSOR MAKE ANY REPRESENTATION CONCERNING INTEROPERABILITY OF THE SOFTWARE WITH ANY THIRD-PARTY SOFTWARE, NETWORK, FUNCTIONALITY, OR SERVICES.

7. Limitation of Liability.

- 7.1 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF THE PARTY WITH ALLEGED LIABILITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.2 IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER EXCEED THE AGGREGATE AMOUNTS PAID OR OWED BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE FIRST OCCURRENCE OF THE EVENTS GIVING RISE TO ANY CLAIM.

- 7.3 NOTWITHSTANDING ANY STATEMENT TO THE CONTRARY IN THIS AGREEMENT, THE LIMITATIONS OF LIABILITY OF THIS SECTION SHALL NOT APPLY TO A PARTY'S OBLIGATIONS OF INDEMNIFICATION, OR CLAIMS OF A BREACH OF CONFIDENTIALITY, GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, OR CLAIMS ARISING FROM MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR VIOLATION OF APPLICABLE LAWS OR REGULATIONS.

8. Indemnification.

8.1 Licensors Indemnification.

- 8.1.1 Licensors (here, the “**Indemnifying Party**”) shall indemnify Licensee and its affiliates, owners, officers, directors, shareholders, agents and employees (here, the “**Indemnified Party**”) from and against any and all losses, costs, damages, injuries, awards, judgments and liabilities, including but not limited to legal and professional fees, costs, and expenses (“**Losses**”), incurred by the Indemnified Party as a result of any claim, suit, proceeding or cause of action asserted against the Indemnified Party by a third party (“**Claim**”) and shall defend the Indemnified Party against any such Claims arising from: i) any IP infringement, including without limitation unlawful disclosure, use or misappropriation of a trade secret, owing to the Indemnified Party's use of the Software; ii) any breach of this Agreement by the Indemnifying Party, or iii) the Indemnifying Party's gross negligence or willful misconduct.

- 8.1.2 The Indemnifying Party shall have no liability for any Claim resulting from: (a) use or combination of the Software with any other goods or services not supplied by the Indemnifying Party; or (b) any modification or alteration of the Software by anyone not so authorized by the Indemnifying Party, where such Claim would not have arisen except for such use, combination, modification or alteration.

- 8.1.3 Should the Software become, or in the Indemnifying Party's opinion be likely to become, the subject of an Claim, the Indemnifying Party shall at its option and sole expense either: (i) procure for the Indemnified Party the right to continue to use same as contemplated hereunder, or (ii) modify same to eliminate any Claim that might result from its use hereunder, provided that the Software performance must not be diminished by such modification or elimination, or (iii) replace same with an equally suitable, compatible and functionally equivalent non-infringing product at no additional charge to the Indemnified Party. If none of these options is reasonably available to the Indemnifying Party, then the Indemnified Party may terminate this Agreement without further obligation or liability on the part of either Party, except that the Indemnifying Party agrees to promptly refund to the Indemnified Party a pro rata portion of applicable fees paid by the Indemnified Party prior to such termination.

- 8.2 Licensee Indemnification. If Licensee is in OEM Licensee, then Licensee (here, the “**Indemnifying Party**”) shall indemnify Licensors and its Affiliates, owners, officers, directors, shareholders, agents and employees (here, the “**Indemnified Party**”) from and against any and all Losses incurred by the Indemnified Party as a result of any Claim, and shall defend the Indemnified Party against any such Claims arising from: i) Licensee's use of the Software in a way that infringes or misappropriates a third party's IP or personal rights; ii) any infringement or misappropriation of a third party's IP or personal rights arising from any use of a Licensee Product or the Licensee Data; iii) any breach of this Agreement by the Indemnifying Party; or iv) Licensee's gross negligence or willful misconduct.

- 8.3 Indemnification Process. The Indemnifying Party shall defend each Claim, and control and direct the investigation, defense and settlement of each such Claim at its expense. When seeking indemnification, the Indemnified Party shall: 1) promptly notify the Indemnifying Party in writing of the Claim for which indemnification is sought, 2) permit the Indemnifying Party to control the defense and settlement negotiations of the Claim, 3) cooperate with the Indemnifying Party as reasonably requested to assist in the defense and/or settlement of the Claim at the Indemnifying Party's expense, and 4) have the right to provide for its own separate defense at its own expense. Notwithstanding the foregoing, the failure to give notice to the Indemnifying Party within a reasonable time of the commencement of any Claim under this Section will not relieve the Indemnifying Party of any liability to the Indemnified Party under this Section unless such failure materially prejudices the Indemnifying Party's ability to defend such Claim.

9. Confidentiality.

- 9.1 Non-Disclosure Obligation. In the course of performance of this Agreement, each Recipient may receive Confidential Information of the other Disclosing Party. Any and all Confidential Information in any form or media so obtained by a Recipient shall be held in confidence and shall not be used, copied, reproduced, or disclosed to third parties for any purpose whatsoever, except as necessary in connection with the obligations of the Recipient under this Agreement. Each Recipient further agrees that it will take reasonable security precautions to protect the confidentiality of such Confidential Information. Notwithstanding the foregoing, a Recipient may disclose the Disclosing Party's Confidential Information to its employees, consultants, affiliates or professional advisers who have a need to know such information for the purposes of this Agreement, provided that the Disclosing Party shall be responsible for compliance by such persons with the requirements of this Section. The non-disclosure provisions of this Agreement shall survive any expiration or termination of this Agreement, and shall remain in effect for a minimum period of ten (10) years from the date of expiration or termination, except that the Parties shall protect all trade secrets under the non-disclosure provisions of this Agreement indefinitely until such Confidential Information no longer qualifies as a trade secret.
- 9.2 Permitted Disclosure. Notwithstanding any provision hereof, a disclosure by a Recipient of any of the Disclosing Party's Confidential Information (1) in response to a valid order by a court or other governmental body; (2) as otherwise required by law; or (3) necessary to establish the rights of either Party under this Agreement shall not be considered to be a breach of this Agreement by the Recipient; provided, however, that Recipient must provide prompt prior written notice thereof to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent the disclosure. Further, the Recipient shall disclose only the minimum amount of the Confidential Information that it is legally required to furnish and, where appropriate, will exercise its best efforts to obtain written assurances that confidential treatment will be accorded to such Confidential Information.
- 9.3 Equitable Relief. In the case of a breach of the confidentiality provisions of this Section, the Parties hereby agree that their respective remedies at law are inadequate, and consent to equitable enforcement of their obligations under said provisions without the requirement to show irreparable harm, by a court of appropriate equity jurisdiction hereunder.

10. Compliance with Laws.

- 10.1 Compliance. Licensor and Licensee each agree to comply with all laws, rules, and regulations that are applicable to this Agreement. If either Party is required to pay any fine or penalty resulting from the other Party's violation of such laws, rules or regulations, the Party who committed the direct violation shall indemnify and reimburse the other Party for any such payment within twenty-one (21) calendar days.
- 10.2 Export Laws. Licensee shall comply with all domestic and international export laws and regulations. Licensee shall not export the Software or any component thereof, directly or indirectly, in contravention of U.S. law, nor to any prohibited country, entity, or person for which an export license or other governmental approval is required without first receiving written permission from Licensor and obtaining all necessary government approvals. Licensee shall bear responsibility for compliance with all applicable U.S. laws and regulations, including, but not limited to, the Arms Export Control Act ("AECA"), Export Administration Act ("EAA"), Foreign Corrupt Practices Act ("FCPA"), the International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR"), and the regulations promulgated by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"). Licensee acknowledges and understands that the Software may be controlled for export purposes by U.S. law and regulation pursuant to the EAR. Specifically, Licensee acknowledges and understands that the Software when transferred in object code form is an Export Control Classification Number ("ECCN") 5D002.c.1 item on the EAR Commerce Control List ("CCL"). Notwithstanding the foregoing, certain components of the Software that do not include cryptographic techniques may be classified for export purposes as EAR99 software and may be eligible for export. It is Licensee's responsibility to determine eligibility of such components for export. Licensor shall not be responsible or liable in any way for Licensee's compliance with export laws, rules and regulations.

11. Audits and Reports.

- 11.1 Audits. Licensee shall maintain for the Term and for three (3) years thereafter, complete and accurate records in sufficient detail to enable Licensor to verify the number of copies of the Software in use by Licensee, and to otherwise substantiate Licensee's obligations and restrictions under this Agreement. Upon thirty (30) days' prior written notice, Licensor shall have the right, at its sole cost and expense to examine the written records of Licensee to ensure compliance with the terms of this Agreement, or to authorize a third-party auditor to perform such examination. Any such audit shall be conducted during normal business hours and shall not be performed more than once per calendar year. Audits shall not unreasonably interfere with the Licensee's business activities.
- 11.2 Reports. During the Term, Licensee will perform periodic internal audits and evaluations of its use of the Software to document and certify that such use is within the scope of the licenses granted herein, and provide required assurance to Licensor regarding Licensee's compliance with its contractual obligations and limited use of the Software. Upon request, Licensee shall, at its sole expense, provide Licensor with an audit report and any additional reports or information as reasonably necessary to enable Licensor to verify Licensee's compliance with this Agreement.

12. General.

- 12.1 Governing Law: Jurisdiction. Any dispute arising under this Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of Delaware without regard to any choice of law provisions. Any claim or lawsuit arising from or relating to this License Agreement shall be filed and maintained in a court of competent jurisdiction in the Commonwealth of Massachusetts within the United States, without regard to its principles of conflicts of laws. The rights and obligations of the Parties under this Agreement shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods. The state and federal courts located in Massachusetts, shall have sole and exclusive jurisdiction over any dispute arising hereunder and the Parties hereby submit to the jurisdiction thereof.
- 12.2 Dispute Resolution. The Parties agree to attempt in good faith to resolve any controversy, claim, or dispute of any nature whatever arising out of, or relating to, the Agreement, or the breach, termination, enforceability, or validity of the Agreement (a "**Dispute**") promptly by negotiation between executives or managers who have authority to settle the Dispute and who are at a higher level of management than the persons who have direct responsibility for the administration of the Agreement. In the event of a failure to resolve a Dispute per the foregoing, all Disputes that may arise under, out of, or in connection with the Agreement, shall be settled in accordance with the then existing rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any such arbitration shall proceed in accordance with the laws and in the venue of Section 12.1. THE PARTIES UNDERSTAND AND AGREE TO SUBMIT TO ARBITRATION PROCEEDINGS TO SETTLE ANY DISPUTES HEREUNDER, THAT SUCH ARBITRATION WILL BE IN LIEU OF LITIGATION, AND EACH PARTY HEREBY WAIVES THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL IN FAVOR OF THE ARBITRATION PROCEEDING EXCEPT AS PERMITTED UNDER THIS AGREEMENT. THE PARTIES HEREBY WAIVE ANY OBJECTION TO THE VENUE OF SECTION 12.1 AS INCONVENIENT OR INAPPROPRIATE, AND AGREE TO EXCLUSIVE JURISDICTION AND VENUE IN THE DISPUTE RESOLUTION LOCATION.
- 12.3 Costs. Each Party agrees to pay all reasonable costs and expenses that the other prevailing Party incurs in successfully enforcing or defending this Agreement, including reasonable attorneys' and other professionals' fees.

12.4 Independent Contractor. The Parties agree that each is an independent contractor and the Agreement does not create any employment relationship between the Parties for taxation or any other purpose. Each Party shall be responsible for the payment of compensation (including provision for employment taxes, workmen's compensation and any similar taxes) associated with the employment of its personnel. Neither Party shall have the right to bind the other to any agreement with a third party, or to incur any obligation or liability on behalf of the other Party. This Agreement does not constitute a partnership, agency, joint marketing effort, co-marketing effort or joint venture.

12.5 Notice. All notifications required in accordance with this Agreement shall be sent by overnight courier to the addresses set forth below or in any Software ordering document. These addresses shall remain in effect unless modified by written notice hereunder by one Party and addressed to the other Party.

For Licensors:	Eclipses, Inc.
	1083 N. Collier Blvd., # 302
	Marco Island, Florida, 34145
	Att: Steven R. Russo, EVP
	Steven.russo@eclipses.com
	719-323-6680 x 120

12.6 Assignment. Neither Party may assign or transfer this Agreement without the prior written consent of the other Party hereto; such consent not to be unreasonably withheld. Notwithstanding the foregoing, Licensors may assign or otherwise transfer this Agreement to a third party without requiring consent from the Licensee in the event of a sale, merger or other divestiture of substantially all of that Licensors assets to such third party, and the existence and terms of this Agreement may be disclosed in confidence to such third party for the sole purpose of effecting such assignment or transfer, provided that the Licensors must give notice of any such assignment or transfer to the Licensee at least sixty (60) days prior to the time at which such assignment or transfer shall take effect. Licensors further reserves the right to terminate this Agreement with thirty (30) days' notice upon any assignment or transfer of this Agreement. Subject to the foregoing, this Agreement will bind and inure to the benefit of each of the Parties and their respective successors and permitted assigns, and shall not otherwise give rise to any rights to entities other than the immediate Parties hereto. Any act in derogation of the foregoing shall be null and void.

12.7 No Third-Party Beneficiaries. Nothing in the Agreement shall create any rights in any third-party beneficiaries, and neither Party has any obligation to any third party by virtue of the Agreement.

12.8 Severability. If any provision of the Agreement is deemed unenforceable or in violation of any applicable law, such provision shall to such extent be severable and be deemed null and void, and the remainder of the Agreement shall remain in full force and effect.

12.9 No Waiver. The failure of either Party to insist upon the performance of any provision herein or to exercise any right or privilege granted to it hereunder will not be construed as a waiver of such provision or any provisions herein, and the same will continue in full force. The various rights and remedies given to or reserved by either Party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach or any provision be considered to condone any continuing or subsequent breach of the same provision.

12.10 Rights and Remedies. Except as otherwise specifically provided herein, the rights and remedies provided by this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or hereafter be available hereunder, at law, in equity or otherwise.

12.11 Entire Agreement. This Agreement, together with any addenda, exhibits or other attachments, constitutes the entire agreement between the Parties in relation to this engagement. Any revision or modification of the Agreement shall be effective only if it refers to the Agreement, is in writing, and is signed by an authorized representative of both Parties. Facsimile signatures are effective to bind the signing Party and admissible in any court and/or for any lawful purpose.

- 12.12 Force Majeure. Neither Party will be liable for delay or failure to perform any of its obligations where such delay or failure is due to the acts or omissions of the other Party, unavailability of parts or software, war, civil insurrection, natural disaster (such as pandemic, flood, earthquake, hurricane or lightning strike) or other act of God or any other event or condition beyond the reasonable control of such Party.
- 12.13 Headings and Recitals. The paragraph headings in the Agreement are to be given no legal effect. The preamble_recitals are included as an integral part of this Agreement and are to be given full legal effect.