

Teraproc Software Subscription Agreement

BY USING TERAPROC SOFTWARE OR SERVICES, YOU ARE ACCEPTING THIS AGREEMENT AND ACKNOWLEDGES YOU HAVE READ AND UNDERSTANDS THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ORGANIZATION, YOU ARE DEEMED TO HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ORGANIZATION. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, YOU MUST NOT USE TERAPROC SOFTWARE OR SERVICES.

1.0 DEFINITIONS

"Agreement" means this Software Subscription Agreement;

"Teraproc" means Teraproc Inc., a corporation organized under the laws of the Province of Ontario;

"Servers" means the quantity of physical computers which the Software is entitled to manage;

"Documents" means all user documentation supplied by Teraproc with the Software;

"Software" means the specific Teraproc computer program(s) in binary format, supplied by Teraproc hereunder, and includes any Documents.

"Client" means a person or an organization that uses the software distributed by Teraproc

2.0 GRANT OF USE

(a) Non-Production Use. If Client has subscribed the Software for non-production purposes, subject to the terms and conditions of this Agreement, Teraproc grants to Client a personal, limited, non-exclusive permission to use the Software and Documents in a non-production environment, solely for the non-production purposes of testing, evaluation, and integration development between the Software and products sold or licensed by Client, for a subscription term corresponding to the period of time. At the expiry of such subscription term, Teraproc may in its sole discretion renew the subscription term for a subsequent term.

(b) Production Use. If Client has subscribed the Software for production use, subject to the terms and conditions of this Agreement, Teraproc grants to Client a personal, limited, non-exclusive permission to use the Software only for Client's internal business purposes, and only for use on the Designated System, if applicable, with the Servers. This Agreement can be extended by Teraproc to cover additional Servers of Software, upon Client's payment of the relevant fees.

3.0 RESTRICTIONS

Client may not: (a) rent, lease, loan, assign, transfer, share, or resell the Software; (b) make the Software available to third parties, other than for Client's internal business purposes, without the prior written consent of Teraproc; (c) create and distribute derivative works based on the Software, or use the Software for any purpose other than as provided for in this Agreement; (d) increase the number of Servers, except upon payment of the relevant fees to Teraproc; (e) if applicable, make changes to the Designated System, or make any changes in the geographic location from that shown on Client's purchase order, subject to Teraproc's consent, such consent not to be unreasonably withheld or

delayed; (f) export or re-export any Software in violation of any applicable laws, regulations, executive orders, including without limitation Canadian and USA versions of the same.

4.0 PAYMENT

In exchange for the rights granted under this Agreement, Client agrees to pay the fee, set out in the quotation and invoice delivered to Client in respect of the Software (the "Fee"). The entire Fee is payable within thirty (30) days upon issuance of the invoice. If, however, non-resident withholding tax or a similar levy is imposed and a valid government withholding tax certificate is sent at the time of payment to the remittance address, then the net amount may be remitted by Client. If non-resident withholding tax or a similar levy is imposed and a valid government withholding tax certificate is not supplied at the time of payment, then Client shall pay such additional amount as shall result in Teraproc receiving the total Fee or any other amounts it would have paid but for such tax or levy. All Software is delivered to Client F.O.B. Origin.

5.0 LICENSE AND OWNERSHIP

5.1 Software. Each type of Software is governed by a license grant or an end user license agreement, which license terms are contained or referenced in the appendices to this Agreement or the applicable Order Form.

5.2 Freedom to Use Ideas. Subject to Client's rights in Client Information and notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of any Order Form may be used by Teraproc, without an obligation to account, in any way Teraproc deems appropriate, including by or for itself or its clients or customers.

5.3 Marks. Unless expressly stated in an Order Form, no right or license, express or implied, is granted in this Agreement for the use of any Teraproc, Teraproc Affiliate, Client or third party trade names, service marks or trademarks, including, without limitation, the distribution of the Software utilizing any Teraproc or Teraproc Affiliate trademarks.

6.0 WARRANTY

(a) Teraproc warrants that: (i) the support services as part of the software subscription will be performed in a professional and workmanlike manner by qualified personnel; (ii) it has the authority to enter into this Agreement with Client; and (iii) to Teraproc's knowledge, Teraproc branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

(b) EXCEPT AS OTHERWISE SET OUT IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED TO CLIENT ON AN "AS IS" BASIS AND TERAPROC DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OR CONDITION OF MERCHANTABILITY, MERCHANTABLE QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. IN PARTICULAR, TERAPROC DOES NOT WARRANT OR REPRESENT THAT THE SOFTWARE WILL OPERATE

UNINTERRUPTED OR ERROR FREE OR THAT DEFECTS IN THE SOFTWARE ARE CORRECTABLE OR WILL BE CORRECTED.

The limited warranty set forth above gives Client specific legal rights. Client may have additional rights that vary from jurisdiction to jurisdiction.

7.0 LIMITATIONS OF LIABILITY

EXCEPT WITH RESPECT TO CLAIMS UNDER SECTION 3.0 (RESTRICTIONS), IN NO EVENT WILL EITHER PARTY'S CUMULATIVE LIABILITY, EXTEND BEYOND SUCH PARTY'S ACTUAL, DIRECT, PROVABLE DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY CLIENT FOR THE SOFTWARE SUBSCRIPTION. THIS LIMITATION OF LIABILITY SHALL ALSO NOT APPLY TO CLAIMS WITH RESPECT TO DAMAGE TO TANGIBLE PERSONAL PROPERTY, PERSONAL INJURY OR DEATH, OR TO CLAIMS ARISING FROM WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

EXCEPT WITH RESPECT TO CLAIMS UNDER SECTION 3.0 (RESTRICTIONS), IN NO EVENT WILL EITHER PARTY OR TERAPROC BE LIABLE FOR ANY PUNITIVE, AGGREGATED, EXEMPLARY, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OR ANY LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, OR FOR LOSS OF DATA OR USE OF DATA OF ANY KIND HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS.

8.0 TERMINATION

Teraproc may terminate this Agreement if Client breaches any term or condition of this Agreement (including failure to make payment), and Client fails to cure such breach within seven (7) days after receipt of written notice of the breach from Teraproc. Without limiting the foregoing, if Client becomes insolvent or any proceedings have been commenced by or against Client under any bankruptcy, insolvency or similar laws, this Agreement will immediately terminate. Upon termination of this Agreement, Client will immediately stop using the Software and will certify in writing to Teraproc of such action. Teraproc will not be liable to Client for damages of any kind by reason of such termination.

9.0 GENERAL

- (a) Client may not assign this Agreement or transfer the rights granted under it without the prior written consent of Teraproc, which consent may not be unreasonably withheld or delayed.
- (b) Any notice given by one party to the other will be deemed to be given on: the date it is delivered personally; the next business day, if sent by fax; or the next business day following the day shown on the receipt, if sent by registered mail.
- (c) No provision of this Agreement shall be construed against a party because it drafted that provision.
- (d) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the principles of conflicts of laws thereof. Each of the parties hereto irrevocably: (a) submits to the jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in the Borough of Manhattan, New York City in connection with any claims or disputes arising under this Agreement and (b) waives its right to a trial by jury with respect to any

disputes pertaining to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The parties also agree that their respective rights and obligations hereunder shall be solely and exclusively as set forth herein and that Uniform Computer Information Transactions Act (UCITA), whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified, shall not apply to this Agreement and is hereby disclaimed.

(e) In the event this Agreement conflicts with any terms and conditions affixed to any purchase order or otherwise specified by Client, Teraproc's acceptance of Client's order and delivery of the subscription services is solely on the express understanding and condition that this Agreement contains the only terms and conditions that will apply to such order and Teraproc hereby objects to and rejects any conflicting or additional terms and conditions.

(f) Teraproc may sub-contract with any affiliated company, however such sub-contract shall not relieve Teraproc from any liability for performance.