



with Licensed MSP Products; and (b) upon termination of this Agreement for any reason, immediately cease all use of the Trademarks.

## 5. INTELLECTUAL PROPERTY RIGHTS

**5.1. Licensed MSP Products.** Company, and/or its licensors, own all title and proprietary rights, including without restriction all intellectual property rights, in and to the Licensed MSP Products and all copies thereof, all of which contain valuable trade secrets and other intellectual property rights of Company and/or its licensors. The use license described herein is not a sale of the Licensed MSP Products or any copies of them, nor is it a waiver of the rights of Company under the U.S. copyright laws or any other Federal, state, or other applicable laws.

**5.2. Modifications.** MSP is not permitted to make any modifications to the Licensed MSP Products. Notwithstanding the foregoing, if MSP makes any modifications to the Licensed MSP Products in violation of the foregoing sentence, MSP agrees to assign, and hereby does assign, all right, title and interest in such modifications to Company.

## 6. MSP OBLIGATIONS

**6.1. Agreements with MSP Customers.** MSP will ensure that its agreement with each MSP Customer contains terms at least as protective of Company as those set forth in the Company MCA and that it names Company as a third-party beneficiary of such agreement. MSP agrees to indemnify Company against any claims or losses resulting from MSP's breach of this section.

**6.2. Monthly Pipeline Review.** On a monthly basis, at a mutually agreeable time, MSP will discuss with Company current opportunities MSP is developing with potential customers in order to forecast future business.

## 7. PRODUCT ORDERS, PRICE, PAYMENT.

**7.1. Purchase Orders and Invoicing.** MSP may only order SKUs designated as Licensed MSP Products as determined by Company in its sole discretion. MSP will submit a purchase order to Company based on the Model ordered. Orders are subject to acceptance in writing by Company in its sole discretion and will not be binding on Company until the earlier of Company's written acceptance or delivery of the MSP Product. Company will invoice MSP and MSP will pay Company the price set forth in Company's then-current price list. If MSP is purchasing Licensed MSP Products under a Subscription Term, Company will invoice MSP in advance based on the billing terms agreed to in the original order (monthly, quarterly, or annually) for the remainder of the Subscription Term. All invoices are due and payable net thirty (30) days from receipt, unless otherwise noted on the invoice. MSP acknowledges and agrees that Company may, from time-to-time, change the suggested prices for Licensed MSP Products and will provide MSP with new price lists at least thirty (30) days prior to the effective date of the new pricing. Any change in pricing will not apply to any order received prior to the date of such notice if the requested delivery date is less than thirty (30) days from the date of the order. For the avoidance of doubt, fees are payable in full whether or not MSP collects monies from any MSP Customer and whether or not any refunds are given by MSP to the MSP Customer.

**7.2. Change Orders during Subscription Term.** After the first and each subsequent ninety (90) day period of any Subscription Term, MSP may submit an order to Company to increase the current Model licensed to an MSP Customer to a Model license with increased capabilities ("a **Higher Model License**") within the Subscription Term. Upon acceptance by Company, Company will deliver the Higher Model License MSP Product to MSP and the applicable fee will be adjusted to the then current price for the Higher Model License MSP Product. For purposes of clarification, MSP may not change to a Model license with lower capabilities during the Subscription Term.

**7.3. Payment in US Dollars.** All payments owed by MSP will be made in U.S. Dollars. Company may charge interest on any past due amount at a rate equal to the lesser of one- and one-half percent (1½%) per month, or the highest rate permitted by applicable law.

**7.4. Taxes.** Pricing for Licensed MSP Products hereunder is exclusive of federal, state, and local excise, sales, use, property, occupation, or similar taxes. MSP agrees to pay all such taxes due in respect of the Licensed MSP Products which will be added to the total amount invoiced to MSP, unless MSP furnishes Company with a valid resale or exemption certificate. In the event that Company is required to or does pay any of such taxes, MSP, upon being advised of these payments, will immediately repay the amount thereof to Company.





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**7.5. Audit.** MSP shall permit Company, or an independent certified accountant appointed by Company, access to MSP's premises and MSP's books of account and records at any time on fifteen (15) business days written notice during normal business hours for the purpose of inspecting, auditing, verifying, or monitoring the manner and performance of MSP's obligations under this Agreement including without limitation the payment of all applicable fees. Company shall not be able to exercise this right more than once in each calendar year unless Company can reasonably assert that an MSP Customer is using more Company Licensed MSP Products than has been licensed by MSP from Company. If an audit reveals (a) MSP is using an unauthorized Licensed MSP Product or is overusing a Company Licensed MSP Product, MSP shall have forty-eight (48) hours to terminate the overage or upgrade to a higher model Licensed MSP Product, or (b) MSP has underpaid fees, MSP shall be invoiced for and shall pay to Company within thirty (30) days of the date of invoice an amount equal to the shortfall between the fees due and those paid by MSP. If the amount of the underpayment exceeds five percent (5%) of the fees due or the audit reveals a violation of any license restrictions pursuant to this Agreement then, without prejudice to Company's other rights and remedies, MSP shall also pay Company's reasonable costs of conducting the audit.

**8. RESTRICTIONS.** MSP is not permitted to: (a) use the Licensed MSP Products or provide MSP Services, in whole or in part, for the benefit of any third party other than MSP Customers; (b) use the Licensed MSP Products for rental or timesharing, or to sublicense, lend, rent, or lease the Licensed MSP Products to any third party; (c) reverse engineer, disassemble, or decompile the Licensed MSP Products or any portion thereof or otherwise attempt to derive or determine the source code or the logic therein except to the extent and for the express purposes authorized by applicable law; (d) modify, translate, or develop derivative works of the Licensed MSP Products or permit others to do so; (e) reproduce the Licensed MSP Products or remove any copyright, trademark, proprietary rights, disclaimer, or warning notices placed on thereon; or (f) publish the results of any benchmark tests run on the Licensed MSP Products.

## **9. COMPANY WARRANTIES**

**9.1. Limited Warranty.** Company warrants to MSP that for a period of ninety (90) days from the date of shipment of the Licensed MSP Product that the Licensed MSP Product will perform materially in accordance with the accompanying Documentation, provided that such Licensed MSP Product is properly used by MSP in accordance with such Documentation and this Agreement. Company makes no warranty as to the Licensed MSP Product after said ninety (90) day period.

**9.2. Remedies.** Company's sole and exclusive obligation and MSP's sole and exclusive remedy under this limited warranty shall be Company's commercially reasonable effort to make the Licensed MSP Product perform substantially in accordance with the accompanying Documentation. The above remedy is available only if Company is promptly notified in writing within the applicable warranty period. These limited warranties are void if failure of the Licensed MSP Product is due to accident, abuse, or misuse.

**9.3. Exclusive Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE WARRANTIES STATED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR QUALITY OF SERVICE. NO WARRANTIES SHALL ARISE UNDER THIS AGREEMENT FROM COURSE OF DEALING OR USAGE OF TRADE. MSP ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE LICENSED MSP PRODUCTS TO ACHIEVE MSP'S INTENDED RESULTS, AND FOR THE OPERATION, USE AND RESULTS OF THE LICENSED MSP PRODUCTS. Without limiting the foregoing, MSP is responsible for the supervision, management, and control of the use of the Licensed MSP Products and any output of the Licensed MSP Products, including but not limited to proper installation and establishment of adequate backup and archival processes to prevent any adverse consequences in the event of a malfunction. Company does not warrant that MSP's use of the Licensed MSP Products will be uninterrupted or error-free. Except as specifically provided herein, the entire risk as to the quality and performance of the Licensed MSP Products remains with MSP. MSP agrees that it has not relied on the future availability of any programs or services in entering into this Agreement.

**9.4. Third Party Applications.** Company does not make any warranties regarding any Third Party Applications, whether or not such Third Party Applications are designated by Company as "certified," "approved," "recommended" or are otherwise provided by a third party that is a member of a Company partner program. Any purchase or use by MSP of any Third Party Applications for the benefit of the MSP Customer is solely between MSP and the applicable third party provider and MSP agrees that Company has no liability or obligation to MSP or MSP Customer for such Third Party Applications, the results of the use thereof, or the effect that the use thereof has on the operation of the Licensed MSP Products.

**10. MSP WARRANTIES.** MSP warrants and agrees that it shall: (a) ensure that each MSP Customer is bound by a contract with MSP for MSP Services, the terms of which are no less protective of Company than the terms of this Agreement; (b) ensure that each MSP Customer ceases to access and/or use the Licensed MSP Products if they no longer have a valid agreement with MSP for the supply of MSP Services or if