TERRACOTTA

SOFTWARE LICENSE & SUPPORT SUBSCRIPTION AGREEMENT
STANDARD TERMS AND CONDITIONS

THIS SOFTWARE LICENSE AND SUPPORT SUBSCRIPTION AGREEMENT (this "Agreement") is entered into and effective as of the date of the receipt of this Software by you (the "Customer").

THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN CUSTOMER AND TERRACOTTA.

1. **Definitions**.

   "Development Use" means use of the Software by customer to design, develop and/or test new applications for Production Use.

   "Documentation" means Terracotta's current user manuals, operating instructions and installation guides generally provided with the Software to its licensees.

   "Maintenance Release" means Upgrades and Updates (as defined in the attached Exhibit A) to the Software which are made available to licensees pursuant to the standard Support Services Terms and Conditions.

   "**Order"** means the document by which Software and Support Services are ordered by Customer. The Order shall reference and be solely governed by this Agreement.

   "Production Use" means using the Software with Customer's applications for internal business purposes only, which may include third party customers' access to or use of such applications. Production Use does not include the right to reproduce the software for sublicensing, resale, or distribution, including without limitation, operation on a time sharing or service bureau basis or distributing the software as part of an ASP, VAR, OEM, distributor or reseller arrangement.

   "Software" means the object code versions of the Software described on an Order and the related Documentation.

   "**Support Services"** means technical support for Software under Terracotta's then-current policies. Terracotta's current, standard Support Services Terms and Conditions are attached hereto.

   "Subscription Term" means the first year after the Effective Date of this Agreement and a related Order, including any applicable renewal terms.

   "Territory" means the United States and any additional territories explicitly agreed to by the parties, as set forth on an Order.

2. **License.**

   a. License Grant. Terracotta grants Customer a fee-bearing, non-exclusive and non-transferable (except as permitted herein) license to use the Software and the Documentation, solely for Customer's Development Use and/or Production Use, as specified in an Order, subject to the terms and conditions of this Agreement and the following limitations: (i) Customer may not copy the Software, except for archival or disaster recovery purposes, and if Customer does copy for these purposes, Customer will preserve any proprietary rights notices on the Software and place such notices on any and all copies Customer has made or makes; (ii) Customer agrees not to reverse engineer, decompile, disassemble, or otherwise attempt to determine source code or protocols from the Software; (iii) Customer agrees not to lease, rent or sublicense the Software to any third party, or otherwise use it except as permitted in this Agreement; (iv) Customer may modify the Software in accordance with the Documentation solely to allow for interoperability with Customer's internal MIS systems. Any such modifications made in (iv) above shall not be derivative works, and Customer shall not create or attempt to create any derivative works from the Software. Customer may not disclose the results of any performance benchmarks to any third party without Terracotta's prior written consent. Title, ownership rights and all intellectual property rights in and to the Software shall remain the sole and exclusive property of Terracotta. Terracotta retains all rights not expressly granted to Customer in this Agreement.

   b. **Consultant Use of Software.** Customer may permit its third party consultants to access and use the Software solely for Customer's operations permitted hereunder, provided that said consultants have signed an agreement with Customer protecting Terracotta's intellectual property with terms no less stringent than the terms and conditions of this Agreement, and that Customer ensures that any such consultant's use of the Software complies with the terms of this Agreement.

   c. **Audit.** Terracotta may, at any time during the term of this Agreement and with seven (7) days prior written notice, request and gain access to Customer's premises, subject to Customer's reasonable security procedures, for the limited purpose of conducting an audit to verify that Customer is in compliance with this Agreement. Customer will promptly grant such access and cooperate with Terracotta in the audit. The audit will be restricted in scope, manner and duration to that reasonably necessary to achieve its purpose and not disrupt Customer's operations. Customer shall be liable for promptly remedying any underpayments revealed during the audit. If the audit reveals an underpayment discrepancy in excess of five per cent (5%), Customer will also be liable for the costs of the audit.

3. **Confidential Information.** By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall be limited to the Software, the terms and pricing under this Agreement, and all information clearly identified as confidential. A party's Confidential Information shall not include information that: (i) is or becomes a part of

the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party. The parties agree to hold each other's Confidential Information in confidence during the term of this Agreement and for a period of two (2) years after termination of this Agreement. The parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party for any purpose other than the implementation of this Agreement. Terracotta may reasonably use Customer's name and a description of Customer's use of the Software for its investor relations and marketing purposes.

4. **Payments, Shipments and Taxes.** The total non-refundable (subject to Articles 5(b) and 6(b)(iii)), non-cancelable license and Support Services fees for each Order will be due and payable within thirty (30) days from the date of Terracotta's invoice. The terms and conditions of this Agreement shall prevail regardless of any preprinted or conflicting terms on a purchase order, other correspondence, and any and all verbal communication. Customer will pay all sales, use, VAT, and other consumption taxes, personal property taxes and other taxes (other than those based on Terracotta's net income) unless Customer furnishes satisfactory proof of exemption. Terracotta may assess interest charges of one percent (1%) per month for late payments.

5. **Limited Warranty.**

   a. **Exclusive Warranty.** For a period of ninety (90) days after delivery of the Software, Terracotta warrants that the Software shall materially conform to the Documentation. Terracotta does not warrant that operation of the Software will be uninterrupted or "bug" free.

   b. **Remedies**. If Terracotta breaches the foregoing warranty and Customer promptly notifies Terracotta in writing of the nature of the breach, Terracotta shall make commercially reasonable efforts to promptly repair or replace the non-conforming Software without charge. If, after a reasonable opportunity to cure, Terracotta does not repair or replace the non-conforming Software, Customer must return the Software and Documentation to Terracotta, or certify in writing that all copies have been destroyed, and Terracotta will refund the license fees it received from Customer for the Software. This is Customer's sole and exclusive remedy for breach of the exclusive warranty in Article 5(a).

   c. **Disclaimer of Warranty**. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND MERCHANTABILITY.

6. **Limitation of Liability**.

   a. **Limitation.** Terracotta's aggregate liability to Customer for damages concerning performance or nonperformance by Terracotta or in any way related to this Agreement, and regardless of whether the claim for such damages is based in contract, tort, strict liability, or otherwise, shall not exceed the license fees received by Terracotta from Customer for the affected Software for the six (6) month period preceding the occurrence of such liability.

   b. **No Consequential Damages.** In no event shall Terracotta be liable for any indirect, incidental, special, punitive or consequential damages, including without limitation damages for lost data or lost profits, even if Terracotta has been advised as to the possibility of such damages.

7. **Term and Termination**. This Agreement, including Exhibit A and any Order(s), will continue for the duration set forth in any Order(s) and will automatically renew in one (1) year increments unless either party terminates the Agreement by providing written notice to the other at least sixty (60) days prior to the anniversary of the Effective Date. Either party will be in default if it declares bankruptcy or otherwise fails to perform any of its duties or obligations and does not undertake an effort to substantially cure such default within thirty (30) days after written notice is given to the defaulting party, except that any breach of Article 3 shall be grounds for immediate termination. In the event of default, the non-defaulting party may terminate this Agreement by providing written notice of termination to the defaulting party. If Customer is the defaulting party, Customer must promptly, at Terracotta's direction, destroy or return all affected Software and Documentation. Upon termination of this Agreement for non-default, the provisions of Articles 1, 2, 3, 4, 5(c), 6(c), 7, 8 and 10 will survive. Upon termination of this Agreement for default, the provisions of Articles 1, 3, 4, 5(c), 6(c), 7, 8 and 10 will survive.

8. **Support Services.**

   a. **Support Services**. Support Services are included as part of this subscription Agreement. Support Services ordered by Customer will be provided under Terracotta's Support Services policies in effect on the date Support Services are ordered. Terracotta's Support Services policies as of the Effective Date are attached hereto as Exhibit A. Except as otherwise provided herein, Support Services fees paid are nonrefundable.

   b. **Renewal of Subscription Term**. At the expiration of each Subscription Term, Customer may continue to receive license rights and Support Services in one (1) year increments under Terracotta's then current fees and policies. Terracotta shall provide Customer reasonable notice of subscription fees due. If Customer elects not to renew the subscription, Customer shall notify Terracotta of its intent not to renew at least sixty (60) days prior to the end of the applicable Subscription Term. Reinstatement fees may apply under Terracotta's policies when Customer reinstates its subscription.

9. **General.**

a. **Force Majeure**. Neither party shall be liable for any delay or failure in performance due to causes beyond its reasonable control.

b. **Export Compliance**. Customer may not download or otherwise export or re-export the Software or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations.

c. **Assignment**. Customer may not assign this Agreement without Terracotta's prior written consent which will not be unreasonably withheld.

d. **Favorable Publicity.** Terracotta may (a) favorably reference Customer as a Terracotta customer to third parties; (b) favorably reference Customer in printed marketing materials, and (c) favorably use Customer's name and/or logo for the limited purpose of identifying Customer as a current or former Terracotta customer, including placing such information on Terracotta's website, brochures, or other marketing materials. Likewise, Customer may favorably reference Terracotta as providing, or having provided, software and support services to Customer to third parties.

e. **Severability**. If any part of this Agreement is held to be unenforceable, in whole or in part, such holding will not affect the validity of the other parts of the Agreement.

f. **Waiver**. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

g. **Notices**. All notices permitted or required under this Agreement shall be in writing and shall be delivered in person, by facsimile, overnight courier service or mailed by first class, registered or certified mail, postage prepaid, to the address of the party specified above or such other address as either party may specify in writing, Attention: Office of the General Counsel. Such notice shall be deemed to have been given upon receipt.

h. **Governing Law.** This Agreement will be governed by both the substantive and procedural laws of California, U.S.A., excluding its conflict of law rules and the United Nations Convention for the International Sale of Goods.

i. **United States Government Rights**. The Software provided under this Agreement is commercial computer software developed exclusively at private expense, and is in all respects the proprietary data belonging solely to Terracotta or its licensors.

Department of Defense Customers: If the Software is acquired by or on behalf of agencies or units of the Department of Defense (DOD), then, pursuant to DOD FAR Supplement Section 227.7202 and its successors (48 C.F.R. 227.7202) the Government's right to use, reproduce or disclose the Software and any accompanying Documentation acquired under this Agreement is subject to the restrictions of this Agreement.

Civilian Agency Customers: If the Software is acquired by or on behalf of civilian agencies of the United States

Government, then, pursuant to FAR Section 12.212 and its successors (48 C.F.R. 12.212), the Government's right to use, reproduce or disclose the Software and any accompanying Documentation acquired under this Agreement is subject to the restrictions of this Agreement.

j. **Entire Agreement.** Any amendment or modification to the Agreement must be in writing signed by both parties. This Agreement constitutes the entire agreement and supersedes all prior or contemporaneous oral or written agreements regarding the subject matter hereof. This Agreement shall also supersede all terms of any "shrinkwrap" or "clickwrap" license included in any package, media, or electronic version of Terracotta-furnished Software and any such Software shall be licensed under the terms of this Agreement. Customer agrees that (i) any and all Orders will be governed by these Standard Terms and Conditions and (ii) the appropriate fees will be timely paid. The terms and conditions of this Agreement shall prevail regardless of any preprinted or conflicting terms on Orders.

1.   **Definitions.**

"Error" means either (a) a failure of the Software to conform to the specifications set forth in the Documentation, resulting in the inability to use, or restriction in the use of, the Software, and/or (b) a problem requiring new procedures, clarifications, additional information and/or requests for product enhancements.

"Update" means either a software modification or addition that, when made or added to the Software, corrects the Error, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of the Error on Customer.

"Upgrade" means a revision of the Software released by Terracotta to its end user customers generally, during the Support Services Term, to add new and different functions or to increase the capacity of the Software. Upgrade does not include the release of a new product or added features for which there may be a separate charge.

2.   **Terracotta Customer Support Services.** On the Order, Customer may select either (a) Terracotta Production Support for Production Use licenses or (b) Terracotta Development Support for Development Use licenses. Each includes Maintenance Releases, telephone support and web-based Terracotta eSupport. Subject to additional terms and conditions, Customer may also order customized Support Options and/or Mission Critical Support.

3.   **Updates.**   Terracotta will make commercially reasonable efforts to provide an Update designed to solve or by-pass a reported Error. If such Error has been corrected in a Maintenance Release, Customer must install and implement the applicable Maintenance Release; otherwise, the Update may be provided in the form of a temporary fix, procedure or routine, to be used until a Maintenance Release containing the permanent Update is available. Customer shall reasonably determine the priority level of Errors, pursuant to the following protocols:

a.   Severity 1 Errors: A Severity One Production Error means the (i) production system is severely impacted or completely shut down, or (ii) system operations or mission-critical applications are down. A Severity One Development Error means (iii) an application is in final testing, facing a critical time frame of going into Production Use and is severely impacted or (iv) entire development efforts are blocked. Upon receiving a report of a Severity 1 Error, Terracotta will promptly: (1) respond to Customer's request within 2 hours; (2) ensure that a specialist(s) begins work on the Error within 2 hours, where such specialist(s) shall continue to expend best-efforts thereafter to work towards providing an Update as soon as possible; and (3) provide ongoing communication on the status of an Update.

b.   Severity 2 Errors: A Severity Two Production Error means (i) the production system is functioning with limited capabilities, or (ii) is unstable with periodic interruptions, or (iii) mission critical applications, while not being affected, have experienced material system interruptions. A Severity Two Development Error means (iv) there is a time sensitive question impacting performance or deliverables, or (v) a major subsystem under development is blocked. Upon receiving a report of a Level 2 Severity Error, Terracotta will promptly: (1) respond to Customer's request within 4 hours; (2) ensure that a specialist(s) begins work on the Error within 8 hours, and the specialist(s) will make commercially-reasonable efforts thereafter to provide an Update as soon as possible; and (3) provide ongoing communication on the status of an Update.

c.   Severity 3 Errors: A Severity Three Error means there (i) are minor errors in fully-operational production systems, or (ii) there are errors in system development that may impact performance deliverables. Upon receiving a report of a Level 3 Severity Error, Terracotta will: (1) respond to Customer's request within 24 hours; and (2) make commercially-reasonable efforts to include a patch or fix for the Error in Terracotta's next Upgrade; and (3) provide ongoing communication on the status of an Update.

d.   Severity 4 Errors: A Severity Four Error is (i) a need to clarify procedures or information in documentation, or (ii) is a request for a product enhancement. Terracotta may include an Update in the next Maintenance Release. Upon receiving a report of a Level 4 Severity Error, Terracotta will: (1) respond to Customer's request within 48 hours; and (2) provide ongoing communication on the status of an Update.

4.   **Maintenance Releases and Upgrades.** During the Support Services Term, Terracotta shall make Maintenance Releases available to Customer if, as and when Terracotta makes any such Maintenance Releases generally available to its customers.   If a question arises as to whether a product offering is an Upgrade or a new product or feature, Terracotta's categorization will govern, provided that Terracotta treats the product offering as a new product or feature for its end user customers generally.

5.   **Conditions for Providing Support.** Terracotta's obligation to provide Support Services is conditioned upon the following: (a) Customer makes reasonable efforts to correct the Error after consulting with Terracotta; (b) Customer provides Terracotta with sufficient information and resources to correct the Error either at Terracotta's Customer Support Center or via remote access to Customer's site, as well as access to the personnel, hardware, and any additional software involved in discovering the Error; (c) Customer promptly installs all Maintenance Releases; and (d) Customer procures, installs and maintains all equipment, telephone lines, communication interfaces and other hardware necessary to operate the Software.

6**.   Technical Support Contacts**. The Terracotta Customer Support Center will provide telephone support to two (2) Customer contacts, per application ("Technical Support Contacts").

Technical Support Contacts will be the only interface to the Terracotta Customer Support Center. In an emergency, a Terracotta Customer Support Engineer will begin working on an Error for an unauthorized contact on an exception basis

subject to later verification and involvement of a named Technical Support Contact.

7. **Exclusions from Terracotta's Support Services.** Terracotta is not obligated to provide Support Services in the following situations: (a) the Software has been changed, modified or damaged (except if under the direct supervision of Terracotta); (b) the Error is caused by Customer's negligence, hardware malfunction or other causes beyond the reasonable control of Terracotta; (c) the Error is caused by third party software not licensed through Terracotta; (d) Customer has not installed and implemented Maintenance Release(s) so that the Software is a version supported by Terracotta; or (e) Customer has not paid the Support Services fees when due.

8. **Termination of Support Services.** Terracotta reserves the right to discontinue the Support Services should Terracotta, in its sole discretion, determine that continued support for any Software is no longer economically practicable. Terracotta will give Customer at least three (3) months prior written notice of any such discontinuance of Support Services and will refund any unaccrued Support Services fees Customer may have prepaid with respect to the affected Software. Terracotta shall have no obligation to support or maintain any version of the Software except (i) the then current version of the Software, and (ii) the immediately preceding version of the Software for a period of six (6) months after it is first superseded. Terracotta reserves the right to suspend performance of the Support Services if Customer fails to pay any amount that is payable to Terracotta under the Agreement within thirty (30) days after such amount becomes due.