



ENLIGHTEN SOFTWARE SOLUTIONS, INC.
END USER TERMS AND CONDITIONS

THIS IS A LEGAL AGREEMENT BETWEEN YOU AND ENLIGHTEN SOFTWARE SOLUTIONS, INC. ("ENLIGHTEN"). BY USING THIS PRODUCT, YOU AGREE TO THE TERMS AND CONDITIONS CONTAINED HEREIN WITH THIS SOFTWARE PACKAGE (THE "SOFTWARE") YOU INDICATE YOUR ACCEPTANCE AND AGREE TO BE BOUND BY THE END USER TERMS AND CONDITIONS DESCRIBED HEREIN. IF YOU DO NOT AGREE TO THE END USER TERMS AND CONDITIONS DESCRIBED HEREIN, PLEASE PROMPTLY RETURN THE SOFTWARE PACKAGE AND THE ACCOMPANYING ITEMS (INCLUDING ALL WRITTEN AND OTHER MATERIALS) TO ENLIGHTEN.

1. **Definitions.** Unless defined below, all terms are as defined on the ENLIGHTEN SOFTWARE SOLUTIONS, INC. License Agreement.

2. **Term.** For purposes of this Agreement, the "Evaluation Term" shall mean a period commencing upon delivery of the Software to you and continuing for thirty (30) days thereafter. You may extend the license granted in Paragraph 3 ("Software License") beyond the Evaluation Term for a period continuing for the life of the copyright in the Software (the "Extended Term") by paying the then-current end user license fees and completing, signing, and returning the ENLIGHTEN SOFTWARE SOLUTIONS, INC. License Agreement. The Software shall be deemed accepted by you upon execution of the ENLIGHTEN SOFTWARE SOLUTIONS, INC. License Agreement. This Agreement commences upon the Effective Date and continues for the Evaluation Term and Extended Term, if any.

3. **Software License.** Subject to these End User Terms and Conditions, ENLIGHTEN hereby grants to you a non-exclusive, non-transferable license (without the right to sublicense) to use the Software and its related documentation (i) during the Evaluation Term, solely for internal evaluation by your employees and contractors, or (ii) during the Extended Term, for your internal business use on the Designated Equipment for access by your employees and contractors at the Licensed Facilities, subject to the end user quantity limits imposed by the Software's license manager ("Quantity Limit"). You can increase the Quantity Limit by paying ENLIGHTEN the applicable then-current license fee.

4. **Restrictions.** The Software may not be reverse compiled, reverse assembled, reverse engineered, used, executed, copied, or modified except as stated in this Agreement. You may make a reasonable number of archival copies of the Software for backup or archival purposes in accordance with applicable copyright law. You must retain, reproduce, and abide by all proprietary rights notices, serial numbers, and other notices of ENLIGHTEN and its licensors on the Software and its related documentation and any copies thereof. You will establish backup plans, restart and recovery procedures, and audit controls sufficient to maintain the security and integrity of the Software. "Software" includes but is not limited to (i) any Software updates and/or upgrades provided by ENLIGHTEN to you during the Evaluation Term and Extended Term, if any, and (ii) any documentation provided to you during this Agreement, including but not limited to hard copy and electronic manuals, release notes, installation procedures, and bug reports.

5. **Designated Equipment and Licensed Facilities.** You may, upon receiving ENLIGHTEN's prior written consent, change the Designated Equipment, transfer the use of the Software to another piece of Designated Equipment and/or change the Licensed Facilities. You will provide ENLIGHTEN with written notice of the proposed new Designated Equipment or Licensed Facilities. The fee for any such transfer shall be in accordance with ENLIGHTEN's then-current published price list and shall be paid by you. If you desire to transfer the use of the Software from one system class to a higher system class (as defined in ENLIGHTEN's then-current published price list), you will pay to ENLIGHTEN the difference between the then-current license fees for the lower class and the higher class. You agree to notify ENLIGHTEN thirty (30) days in advance of any requested Software relocation(s), the cost of which shall be borne by you.

6. **Taxes and Payments.** You are responsible for all taxes, fees, duties, governmental charges, and similar assessments (other than taxes based on ENLIGHTEN's net income) attributable to your license of the Software and procurement of Maintenance. All payments are due not later than thirty (30) days following ENLIGHTEN's invoice date. You agree to pay interest on overdue payments at the rate of 1.5% per month or, if less, the highest rate permitted by law.

7. **Maintenance.** Maintenance is not included with the Software, but must be separately purchased. ENLIGHTEN will provide such maintenance and continuing support ("Maintenance") on an annual basis at the rates described in the ENLIGHTEN SOFTWARE SOLUTIONS, INC. License Agreement. The following provisions shall apply to any procured Maintenance:

(a) **General Support.** ENLIGHTEN shall provide you with telephone assistance for inquiries related to the use of the Software and the reporting of errors or other problems with the Software during ENLIGHTEN's normal business hours.

(b) **Error Corrections.** If ENLIGHTEN is notified in writing by you of an error or other problem in the Software, and such error or other problem can be verified, either by reproduction at ENLIGHTEN's facility or through remote access to your facility, ENLIGHTEN shall use reasonable efforts to correct the error or other problem within a reasonable time.

(c) **Provision of Updates.** ENLIGHTEN shall make updates to the Software and its related documentation available to you at no additional charge. Updates shall be provided in the same form and manner as the Software was provided unless the parties otherwise agree. You agree to promptly install new updates, patches, and fixes of Software as requested by ENLIGHTEN.

(d) **Lapse.** If you wish to purchase Maintenance after not having Maintenance for any period of time in which this Agreement was in effect ("Lapse Period"), you will be required to pay the standard Maintenance fees in effect for any such Lapse Period in addition to fees for the period for which you wish to purchase Maintenance.

8. **Limited Warranties and Remedies.**

(a) **Software.** During the Evaluation Term, the Software is provided "AS IS" and without any warranty. During the Extended Term, the only warranty provided by ENLIGHTEN to you with regard to the Software is that the Software media is warranted against defects in material and workmanship under normal use for a period of ninety (90) days from the date of delivery to you. If a defect appears in this ninety (90) day period, ENLIGHTEN will either repair or replace defective Software media.

(b) **Maintenance.** The only warranty provided by ENLIGHTEN to you with regard to Maintenance is that such Maintenance will be of professional quality and will conform to generally accepted industry standards and practices for similar services.

(c) Further Warranty Limitations. In addition to the other limitations set forth in this Agreement, ENLIGHTEN will have no warranty obligations if you do not promptly notify ENLIGHTEN in writing of each defect and adequately describe the defect. ENLIGHTEN is not obligated to correct a Software media defect that cannot be reproduced. ENLIGHTEN's warranties in this Agreement do not apply to any Software media (i) improperly installed or operated, (ii) altered, except by ENLIGHTEN or in accordance with its instructions, or (iii) damaged by improper electrical power or environment, abuse, misuse, accident, or negligence. No written or oral representation regarding the capacity, suitability, or performance of Software or Maintenance, whether by an ENLIGHTEN employee or otherwise, is a warranty by ENLIGHTEN or gives rise to any liability of ENLIGHTEN. You acknowledge that no promise, representation, warranty, or undertaking has been made or given by ENLIGHTEN or by any other entity in relation to (i) the profitability of, or any other consequences or benefits to be obtained from, the delivery or use of the Software, (ii) merchantability or fitness for any purpose or purposes of the Software, or (iii) the Maintenance. You have relied upon its own skill and judgment in deciding to enter into this Agreement.

(d) Except as expressly stated herein, THE SOFTWARE IS LICENSED HEREUNDER "AS IS." ENLIGHTEN DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. ENLIGHTEN SPECIFICALLY DISCLAIMS ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES REGARDING THE SOFTWARE, DOCUMENTATION, AND MAINTENANCE, INCLUDING THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT.

9. Limitations on Damages. ENLIGHTEN IS NOT RESPONSIBLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF DATA, OR LOST PROFITS OR REVENUES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT ENLIGHTEN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ENLIGHTEN'S TOTAL LIABILITY FOR ALL DAMAGES IN ANY ACTION BASED ON, ARISING OUT OF, OR IN CONNECTION WITH THE SOFTWARE, MAINTENANCE, OR THIS AGREEMENT SHALL NOT EXCEED THE PRICE YOU HAVE PAID ENLIGHTEN FOR THE SOFTWARE.

10. Termination. ENLIGHTEN may terminate this Agreement at any time for a material breach of this Agreement by you. ENLIGHTEN will provide you with ten (10) days notice of termination. Sections 4, 8, and 9 shall survive termination of this Agreement. Upon termination of any license you must (i) either return to ENLIGHTEN or destroy all copies of the Software and its related documentation, and (ii) furnish to ENLIGHTEN a signed certificate of compliance with this provision. If you desire to terminate any Maintenance provided hereunder, you must provide ENLIGHTEN ninety (90) days advance written notice. Upon said termination of any Maintenance, ENLIGHTEN will be under no obligation to provide you with Maintenance of any type for the applicable Software.

11. Export. You acknowledge that the laws and regulations of the United States, and any other applicable foreign government, may restrict the export and re-export of certain commodities and technical data of such nation's origin, including the Software and its related documentation. You agree that you will not export or re-export the Software and its related documentation without the appropriate United States or foreign government licenses.

12. Intellectual Property Rights and Injunctive Relief. The Software and its related documentation, and all patents, copyrights, trade secrets, and trademarks embodied in or associated with the Software are proprietary to ENLIGHTEN and/or its licensors. No title to or ownership in these items is conveyed to you or to any third party. ENLIGHTEN shall be entitled to appropriate injunctive relief in the event of any unauthorized use of the Software.

13. Assignment. You may not assign this Agreement or any license, or transfer any Software to a different Licensed Facility or to a third party, without ENLIGHTEN's prior written consent.

14. Restricted Governmental Rights. If this product is acquired under the terms of a DoD contract, use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of 252.277-7013 and restrictions set forth in this end user agreement. If this product is acquired under the terms of a civilian agency contract, use, reproduction, or disclosure is subject to 52.227-19 and restrictions set forth in this end user agreement. Unpublished-rights reserved under the copyright laws of the United States. ENLIGHTEN SOFTWARE SOLUTIONS, INC., 999 Baker Way, Fifth Floor, San Mateo, CA, USA 94404

15. Miscellaneous. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions remain in effect. This Agreement is governed by and construed under the laws of the United States of America and the State of California as applied to transactions entered into and to be performed entirely in California between residents of California.

16. Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.