Appendix 1A

SOFTWARE LICENSE AGREEMENT   
(VENDOR-FAVORABLE)

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (this “Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”), between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [state] [corporation/limited liability company/etc.] with a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Vendor”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [state] [corporation/limited liability company/etc.] with a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Customer”) (each of Vendor and Customer, a “Party”; together, the “Parties”).

1 Definitions.

1.1 “Affiliate” means an entity where Customer owns or controls more than 50% of either the entity’s voting rights or the entity’s controlling body, but only for so long as this control continues to exist.

1.2 “Documentation” means the documentation pertaining to the use of the Software that is made available to Customer, as it may be updated from time to time by Vendor.

1.3 “Fees” means the fees described on Exhibit A, and all other fees or charges arising under this Agreement.

1.4 “License Start Date” means, with respect to specific Software, the date on which Customer receives the first copy of that Software.

1.5 “Software” means the software programs listed on Exhibit A, in object code only, and provided by Vendor to Customer, including any Upgrades provided to Customer.

1.6 “Support” means the support services described in Exhibit B.

1.7 “Term” is defined in Section 5.1.

1.8 “Upgrades” means maintenance patches, new releases, or new versions provided to Customer.

2 License Grants and Limitations.

2.1 Software License. Subject to all the terms and conditions of this Agreement, Vendor hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable license during the Term under Vendor’s intellectual property rights to use the number of copies of the Software identified in Exhibit A solely for its own internal business purposes and in accordance with the other restrictions in this Agreement. [The Software may only be copied as may be necessary for backup purposes or to replace a defective copy.]

2.2 Documentation License. Subject to all the terms and conditions of this Agreement, Vendor hereby grants to Customer a nonexclusive, nontransferable, nonsublicensable license during the Term under Vendor’s intellectual property rights to use and copy the Documentation in support of Customer’s licensed use of the Software.

2.3 Use by Affiliates.

2.3.1 Addendum. The Software and Documentation may be used by an Affiliate of Customer provided that prior to any use the Affiliate executes a mutually agreeable addendum to this Agreement by which the Affiliate agrees to be bound by the terms of this Agreement.

2.3.2 Customer Responsibility. Any use by a Customer Affiliate will be subject to the following: (a) Customer is responsible for the acts or omissions of its Affiliate as if they were Customer’s acts or omissions; and (b) the Affiliate’s use must not constitute a violation under any applicable export law or regulation.

2.4 Restrictions.

2.4.1 General. Customer acknowledges that the Software and Documentation contain valuable trade secret and confidential information of Vendor. Customer shall take the actions necessary to fulfill its obligations under this Agreement by instruction or agreement with its employees or agents who are permitted access to the Software or Documentation. Customer shall only give access to the Software or Documentation on a need-to-know basis.

2.4.2 Proprietary Rights. Title to all patents, copyrights, trade secrets, and other proprietary rights in or related to the Software and Documentation (including all of their component parts) are and will remain the exclusive property of Vendor. Customer will not acquire any right in the Software or Documentation except the limited rights specified in this Section 2, or take any action to challenge Vendor’s proprietary rights. Vendor will own all rights in any copy, translation, modification, adaptation, or derivative work of the Software or Documentation, including any improvements, whether or not authorized by Vendor, and Customer hereby assigns these rights to Vendor.

2.4.3 No Implied Licenses. There are no implied licenses in relation to this Agreement, and Customer shall not, and shall not knowingly permit others to, use, modify, or distribute the Software or Documentation outside the scope of the express licenses granted in this Agreement.

2.4.4 No Reverse-Engineering. Customer shall not, and shall not knowingly permit others to: (a) modify the Software; or (b) decompile, reverse-engineer, disassemble, or otherwise attempt, directly or indirectly, to obtain or create source code for the Software; except that decompiling the Software is permitted solely to the extent the laws of Customer’s jurisdiction give Customer the right to do so to obtain information necessary to render the Software interoperable with other software, provided that Customer must first request this information from Vendor and Vendor may, in its sole discretion, either provide this information to Customer or impose reasonable conditions, including a reasonable fee, on this use of the Software to ensure that Vendor’s proprietary rights in the Software are protected.

2.4.5 Required Proprietary Notices. Customer shall ensure that each copy it makes of the Software or Documentation contains the same proprietary notices as provided to Customer.

2.4.6 Unauthorized Distribution or Copying. Other than in accordance with this Agreement, Customer shall not, and shall not knowingly permit others to: (a) lease, license, sublicense, transfer, or assign any of its rights under this Agreement; (b) sell, rent, or distribute the Software or Documentation, including providing access to the Software or Documentation or using the Software or Documentation to provide outsourced services or on a timesharing basis; or (c) use, copy, duplicate, or otherwise reproduce any part of the Software or Documentation. Any breach of this Section 2.4 is a material breach of this Agreement that is incapable of cure.

2.5 Feedback. Vendor welcomes the Customer’s ideas, suggestions, or recommendations regarding a Product (“Feedback”). Vendor is free to use and incorporate the Feedback without any payment to Supplier, and Customer hereby assigns to Vendor all right, title and interest in any intellectual property rights it may have or obtain in the Feedback.

2.6 Reasonable Cooperation. Customer shall promptly provide to Vendor all relevant facts in its possession upon becoming aware of a likelihood of infringement or other illegal use or misuse by any third party of the Software or Documentation or any related intellectual property rights. Customer shall provide reasonable cooperation in any related suits and actions, at Vendor’s request and expense.

2.7 Acceptance. Without prejudice to any warranty rights, Customer will be deemed to have accepted the Software on the License Start Date. All subsequent copies of a particular Software product will be deemed accepted upon acceptance of the first copy delivered to Customer.

3 Technical Support. Vendor shall provide Support and Upgrades in accordance with Exhibit B for one year after the License Start Date. Vendor shall provide an invoice for the renewal amount at least sixty (60) days prior to the end of the current Support term. The term for Support and Upgrades will be renewed automatically for subsequent one-year terms upon Customer payment of the applicable invoice.

4 Fees.

4.1 Prices. Customer shall pay the Fees for the Software, Support and Upgrades in accordance with Exhibit A.

4.2 Payment Terms. All payments are due within thirty (30) days after the License Start Date. For all amounts not paid when due, Customer shall pay an additional charge equal to one and one-half percent (1.5%) of these amounts per month or partial month until paid, except that these additional charges will not apply to unpaid amounts that Customer is disputing in good faith. Customer shall also reimburse Vendor for all expenses incurred by Vendor in exercising its rights under this Agreement or applicable law with respect to a default in payment by Customer, including reasonable attorney fees and the fees of any collection agency retained by Vendor.

4.3 Taxes. All applicable transaction taxes, including sales and use taxes, value added taxes, privilege taxes, and other transactional charges such as duties, customs, tariffs, imposts, and government imposed surcharges (“Transaction Taxes”) will be paid by Customer, and are not included in Vendor’s pricing. If Vendor is required by law to collect Transaction Taxes from Customer and remit them to a taxing authority, Vendor will separately state the Transaction Taxes on an invoice. Each Party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.

4.4 Software Usage Audit. [NOTE: AUDIT RIGHTS MAY NOT BE APPROPRIATE FOR ALL CIRCUMSTANCES.] Upon Vendor’s written request, Customer shall provide to Vendor a signed certification: (a) verifying the Software is being used in accordance with the terms of this Agreement; and (b) listing the locations in which the Software is run, number of users, number of CPUs, and any other information reasonably requested by Vendor. Vendor may, at Vendor’s expense and not more than once annually, audit Customer’s use of the Software and compliance with this Agreement. The audit will be conducted during business hours and will not unreasonably interfere with Customer’s business activities. Customer shall provide Vendor or its auditor with all reasonable information and assistance (including access to related software) required to enable Vendor to determine whether Customer is in compliance with this Agreement. If the audit reveals that Customer has underpaid Fees to Vendor, Customer will be invoiced for the underpaid Fees based upon Vendor’s price list at the time the Fees would have otherwise been incurred, together with interest at a rate of one and one-half percent (1.5%) per month or partial month until paid. If the audit reveals that Customer has underpaid Fees totaling five percent (5%) or more of the Fees due in any year, Customer shall reimburse Vendor for all reasonable expenses associated with the audit.

5 Term and Termination.

5.1 Term. This Agreement commences on the Effective Date and continues [until the termination date specified on Exhibit A]/[in perpetuity], unless otherwise terminated under Section 5.2 (the “Term”).

5.2 Termination. Either Party may terminate this Agreement upon written notice if the other Party is in material breach of this Agreement and fails to correct the breach within thirty (30) days after written notice.

5.3 Effect of Termination. Upon termination of this Agreement, all licenses granted to Customer will immediately terminate and Customer shall: (a) immediately cease using the Software and Documentation; and (b) certify to Vendor in writing within thirty (30) days after termination that Customer has destroyed or returned to Vendor the Software and Documentation and all copies remaining in Customer’s possession or control. This requirement applies to copies in all forms, partial and complete, and whether or not modified or merged into other materials. Termination of this Agreement by either Party will not limit a Party from pursuing any other remedies available to it, including injunctive relief, nor will termination release Customer from its obligation to pay all Fees that Customer has agreed to pay under this Agreement. The Parties’ rights and obligations under [Sections 2.3.2, 2.4, 2.5, 2.6, 4, 5, 6, 7, 8, 9, and 10] will survive termination of this Agreement.

6 Warranties.

6.1 Limited Warranty. Vendor warrants that each unmodified copy of a Software product will substantially conform [to Exhibit A and] to the applicable Documentation at the time of delivery, when operated in accordance with the applicable user manuals. If Customer does not provide written notice to Vendor of a claim for breach under this Section 6.1 within ninety (90) days after the License Start Date with respect to a particular Software product, then its right to make a claim will terminate. The warranty under this Section 6.1 does not apply to subsequently delivered copies of the same Software product after this period has passed for the first copy delivered to Customer.

6.2 Remedies. For any breach of the warranty in Section 6.1, Vendor shall exercise commercially reasonable efforts to modify the Software so that the applicable warranty is true and to deliver to Customer the modified Software, if any. If Vendor concludes this modification is impracticable, then Vendor will refund the Fees paid for the license of the nonconforming Software but Customer must first return to Vendor all copies of the applicable Software in Customer’s possession or control. This requirement applies to all copies in all forms, partial and complete, and whether or not modified or merged into other materials.

7 Disclaimers.

7.1 The express remedies in Section 6 constitute Customer’s exclusive remedies, and Vendor’s sole obligation and liability, for any claim: (a) that any Software or other deliverable does not conform to specifications or is otherwise defective; or (b) that any services were performed improperly.

7.2 EXCEPT FOR THE WARRANTIES IN SECTION 6.1, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CUSTOMER, THE SOFTWARE AND ANY SERVICES ARE PROVIDED “AS IS,” AND VENDOR MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO ANY SOFTWARE OR SERVICES, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT.

7.3 VENDOR DOES NOT WARRANT THAT THE SOFTWARE OR ANY SERVICES WILL MEET ANY CUSTOMER REQUIREMENTS NOT SPECIFIED IN THIS AGREEMENT, THAT THE SOFTWARE WILL OPERATE IN THE COMBINATIONS THAT CUSTOMER MAY SELECT FOR USE, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF CUSTOMER REQUESTS PRE-PRODUCTION (E.G., “ALPHA” OR “BETA”) RELEASES OF SOFTWARE, THESE COPIES ARE PROVIDED “AS-IS” WITHOUT WARRANTY OF ANY KIND.

7.4 Except as may be done in accordance with Section 10.15, no statement by any Vendor employee or agent, orally or in writing, will serve to create any warranty or obligation or to otherwise modify this Agreement.

8 LIMITATION OF LIABILITY.

8.1 EXCEPT WITH REGARD TO CLAIMS BASED UPON CUSTOMER’S BREACH OF SECTION 2.4, NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFITS, SAVINGS, REVENUE, OR USE, DAMAGED OR LOST FILES OR DATA, OR BUSINESS INTERRUPTION) IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EVEN IF THE PARTY SOUGHT TO BE HELD LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. VENDOR WILL NOT BE LIABLE FOR ANY DAMAGES FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR AGGREGATE LIABILITY TO CUSTOMER RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EXCEEDING [THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE ONE-YEAR PERIOD PRECEDING THE FIRST ACT GIVING RISE TO LIABILITY]. [NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES BASED ON ACTIONS OR OCCURRENCES THAT OCCURRED MORE THAN ONE YEAR BEFORE THE OTHER PARTY PROVIDES NOTICE OF THE CLAIM.] THESE LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY, AND WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY SPECIFIED REMEDIES.

8.2 CUSTOMER ACKNOWLEDGES THAT THE FEES CHARGED UNDER THIS AGREEMENT REFLECT THE OVERALL ALLOCATION OF RISK BETWEEN THE PARTIES, INCLUDING BY MEANS OF THE LIMITATION OF LIABILITY AND EXCLUSIVE REMEDIES DESCRIBED IN THIS AGREEMENT. THESE PROVISIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND A MODIFICATION OF THESE PROVISIONS WOULD AFFECT SUBSTANTIALLY THE FEES CHARGED BY VENDOR. IN CONSIDERATION OF THESE FEES, CUSTOMER AGREES TO THIS ALLOCATION OF RISK AND HEREBY WAIVES ANY RIGHT, THROUGH EQUITABLE RELIEF OR OTHERWISE, TO SUBSEQUENTLY SEEK A MODIFICATION OF THESE PROVISIONS OR ALLOCATION OF RISK.

9 Indemnity.

9.1 Vendor Intellectual Property Indemnity. Vendor shall: (a) defend or, at its sole option, settle, at its own expense any suit, action, or proceeding brought against Customer by a third party claiming that the Software infringes [any United States patent issued or any copyright or trade secret arising under the laws of any jurisdiction] (an “IP Action”); and (b) pay damages awarded against Customer in the IP Action, or those monetary damages agreed to by Vendor and the claimant in a settlement of the IP Action. Customer shall: (i) give Vendor prompt written notice of the claim; (ii) tender to Vendor sole control of the defense or settlement of the IP Action; and (iii) cooperate with Vendor in defending or settling the IP Action. If Vendor receives notice of an allegation that any Software infringes a third party’s intellectual property rights, or if Customer’s use of any Software is enjoined as a result of infringement, Vendor may, at its sole option and expense: (A) procure for Customer the right to continue using the Software; (B) modify the Software so that it is no longer infringing; or (C) replace the Software with other Software of equal or superior functional capability. If none of these actions are in Vendor’s determination commercially feasible, Vendor will have the right to terminate the license to that Software. If Vendor terminates a Software license as described above: (1) Vendor shall refund the applicable Fees paid for the license of that Software, prorated [to the end of the applicable term/over a straight-line five-year period]; and (2) Customer shall immediately deliver to Vendor all copies of that Software in Customer’s possession or control. This requirement applies to all copies in all forms, partial and complete, and whether or not modified or merged into other materials. [Notwithstanding any other provision of this Agreement, Vendor will not accept new orders for Software that is subject to a claim of infringement.]

9.2 VENDOR IP INDEMNITY LIMITATIONS. THE RIGHTS GRANTED TO CUSTOMER UNDER SECTION 9.1 WILL BE CUSTOMER’S EXCLUSIVE REMEDY AND VENDOR’S SOLE OBLIGATION AND LIABILITY FOR ANY ALLEGED INFRINGEMENT OF A PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT, INCLUDING MISAPPROPRIATION OF A TRADE SECRET. VENDOR HAS NO LIABILITY FOR ANY CLAIM OF INFRINGEMENT CAUSED BY: (A) MODIFICATION OF THE SOFTWARE WITHOUT THE APPROVAL OF VENDOR; (B) ANY CUSTOMER OR THIRD-PARTY APPLICATION OR OTHER TECHNOLOGY; (C) USE OF THE SOFTWARE IN CONNECTION OR IN COMBINATION WITH EQUIPMENT, DEVICES, OR SOFTWARE NOT PROVIDED BY VENDOR (BUT ONLY TO THE EXTENT THAT THE SOFTWARE ALONE WOULD NOT HAVE INFRINGED); (D) COMPLIANCE WITH CUSTOMER’S DESIGN REQUIREMENTS OR SPECIFICATIONS; (E) USE OF SOFTWARE OTHER THAN AS PERMITTED UNDER THIS AGREEMENT, OR IN A MANNER FOR WHICH IT WAS NOT INTENDED; OR (F) USE OR DISTRIBUTION OF OTHER THAN THE MOST CURRENT RELEASE OR VERSION OF THE SOFTWARE (IF THE INFRINGEMENT WOULD HAVE BEEN PREVENTED BY THE USE OF THIS RELEASE OR VERSION).

9.3 [Customer Use Indemnity. [NOTE: CUSTOMER INDEMNITY MAY NOT BE APPROPRIATE IN MANY CIRCUMSTANCES.] Except with respect to infringement of third-party rights for which Vendor is obligated to indemnify under Section 9.1, Customer shall defend at its own expense any suit, action or proceeding brought against Vendor by a third party based on any claim arising in connection with Customer’s use of the Software (a “Use Action”), and Customer shall pay the damages incurred by Vendor in the Use Action, or those damages agreed to in a settlement of the Use Action, and all reasonable attorney fees and costs of litigation. Vendor shall: (a) notify Customer promptly in writing of the Use Action, (b) tender to Customer sole control of the defense or settlement of the Use Action at Customer’s expense, provided, however, Customer may not settle a Use Action in a manner that would have an adverse impact on the business of Vendor without receiving the prior written consent of Vendor, and (c) cooperate and, at Customer’s expense, assist in the defense of the Use Action. Vendor will have the right to participate at its own expense in any Use Action or related settlement negotiations using counsel of its own choice.]

10 General.

10.1 Export. Customer shall comply with all applicable export laws and regulations of the United States of America, the European Union, and other countries (“Applicable Export Laws”) and assure that no Software is: (a) exported, directly or indirectly, in violation of Applicable Export Laws; or (b) intended to be used for any purposes prohibited by the Applicable Export Laws, including nuclear, chemical, or biological weapons proliferation. The Parties shall not take any actions that would cause either Party to violate the U.S. Foreign Corrupt Practices Act or similar anti-corruption laws.

10.2 U.S. Government End Users. This Agreement is a “commercial supplier agreement” as that term is defined at Federal Acquisition Regulation (“FAR”) (48 C.F.R.) 502.101. The Software and Documentation qualify as “commercial items,” as that term is defined at FAR 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as these terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, a U.S. government end user will acquire the Software and Documentation with only those rights specified in this Agreement. Use of either the Software or Documentation or both constitutes agreement by the government that the Software and Documentation are “commercial computer software” and “commercial computer software documentation,” and constitutes acceptance of the rights and restrictions in this Agreement.

10.3 Notice. All notices under this Agreement, including notices of address change, must be in writing and will be deemed given when sent by (a) registered mail, return receipt requested, or (b) a nationally recognized overnight delivery service (such as Federal Express), to the [President or General Counsel] of the appropriate Party at the relevant address first listed above, or to a Party’s address as changed in accord with this Section.

10.4 [Legal Expenses. If legal action is taken by either Party to enforce its rights under this Agreement, all costs and expenses incurred by the prevailing Party, including reasonable attorney fees and costs of litigation, will be paid by the other Party.]

10.5 Severability. If a provision of this Agreement is broader or of greater scope than a court will enforce, the Parties intend that the court enforce the provision to the greatest extent permitted by law and modify the provision accordingly. If a provision of this Agreement (except for Section 8) is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining provisions will remain in full force and effect.

10.6 Governing Law; Venue. This Agreement is governed by the laws of the State of [\_\_\_\_\_\_\_\_\_\_], without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. [Any litigation related to this Agreement must be brought in a state or federal court located in [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], as permitted by law, except that Vendor may elect to seek injunctive or similar relief in any court having jurisdiction over Customer. Customer hereby consents to the personal jurisdiction of these courts.] [For cross-border agreements, suggest arbitration instead: The Parties agree that any dispute arising out of or in relation to this Agreement or the rights and obligations hereunder must be arbitrated in the English language before [one/three] arbitrator[s] under the administration of the International Centre for Dispute Resolution, and according to its International Arbitration Rules. The seat of the arbitration will be [State], and the place of hearing will be \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_. A Party may seek interim injunctive relief under these Rules and before any court having jurisdiction, and each Party hereby submits to the personal jurisdiction of any court reasonably chosen by the initiating Party for such purposes. The initiating Party shall reimburse the other Party’s costs if the court declines jurisdiction. The arbitral panel will be empowered to grant injunctive relief upon application. Awards of the arbitral panel will be enforceable in any court having jurisdiction, and each Party hereby submits to the personal jurisdiction of any court reasonably chosen by the enforcing Party for such purposes. The enforcing Party shall reimburse the other Party’s costs if the court declines jurisdiction.]

10.7 No Waiver. No failure to exercise, and no delay in exercising, any right will operate as a waiver; nor will any single or partial exercise of a right preclude any further exercise of that right or the exercise of any other right. The waiver by a Party of a breach of this Agreement will not constitute a waiver of any other breach.

10.8 Remedies Cumulative. Unless otherwise stated in this Agreement, each remedy of a Party is cumulative with each other remedy contained in this Agreement and with all other remedies available to that Party at law, in equity, and otherwise, and no pursuit of any particular remedy will constitute an exclusive election of any particular remedy.

10.9 Assignment. Neither Party may assign or transfer, by merger, operation of law or otherwise, this Agreement or any right or duty under this Agreement to a third party without the other Party’s prior written consent, except that Vendor may transfer this Agreement, together with all of its rights and duties under this Agreement, to a successor entity if Vendor is acquired, whether by equity or asset purchase, merger, corporate restructuring or reorganization, or the like. Any purported assignment or transfer in violation of this Section is void.

10.10 Independent Contractor; Use of Subcontractors. Vendor is an independent contractor and nothing in this Agreement or related to Vendor’s performance will be construed to create a joint venture relationship between Customer and Vendor, or an employee relationship between Customer and any Vendor employee or subcontractor. Vendor may, in its discretion, utilize subcontractors to provide services under this Agreement.

10.11 No Third-Party Beneficiaries. This Agreement is an agreement between the Parties, and confers no rights upon any of the Parties’ employees, agents, contractors or customers, or upon any other person or entity.

10.12 Construction of this Agreement. The word “including” is not intended to be exclusive and means “including, but not limited to.” The word “or” is not intended to be exclusive unless the context clearly requires otherwise. Each of the Parties and their counsel have carefully reviewed this Agreement, and, accordingly, no rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting Party will apply in the interpretation of this Agreement.

10.13 Force Majeure. Except with regard to any obligation to pay money, neither Party will be held responsible for any delay or failure in performance caused by fire, flood, embargo, strike, labor dispute, delay or failure of any subcontract, telecommunications failure or delay, act of sabotage, riot, accident, delay of carrier or supplier, voluntary or mandatory compliance with any governmental act, regulation or request, act of God or by public enemy, pandemic, or any act or omission or other cause beyond that Party’s reasonable control. If any of these events does occur, the time to perform an affected obligation will be extended by the length of time the event continues.

10.14 Entire Agreement. This Agreement together with the Exhibits, which are hereby incorporated in this Agreement, contain all the agreements, representations, and understandings of the Parties and supersedes any previous understandings, commitments, representations or agreements, verbal or written, with respect to the subject matter of this Agreement. If there is any inconsistency between a term in Sections 1 through 10 of this Agreement and a term on any exhibit, the term of this Agreement will govern.

10.15 Modification. This Agreement may not be modified or amended except in a written document signed by a duly authorized representative of each Party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement. Each Party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section.

10.16 Purchase Orders. Customer may, for purposes of administrative convenience, use Customer’s standard form of purchase order to order Software. Any terms or conditions on a purchase order in any way different from or in addition to the terms and conditions of this Agreement will have no effect and Vendor hereby rejects these terms and conditions.

10.17 Counterparts; Electronic Copies. This Agreement may be signed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the Parties. Delivery of an executed counterpart by facsimile, electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

|  |  |
| --- | --- |
| [VENDOR NAME] | [CUSTOMER NAME] |
| Signature  Name  Title | Signature  Name  Title |

Exhibit A

Software and Pricing

Exhibit B

Support and Upgrades