

SOFTWARE RESELLER AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of this [*] day of [*] 200[*] (the "Effective Date") by and between ACME, Inc., a company organized and existing under the laws of the Commonwealth of Massachusetts and maintaining its principal place of business at _____ ("ACME"), and [*], a company organized and existing under the laws of [*] and maintaining its principal place of business at [*] ("RESELLER").

WHEREAS, ACME is a developer, owner and licensor of search software; and

WHEREAS, RESELLER is engaged in the business of marketing and selling computer software solutions; and

WHEREAS, the parties desire that RESELLER, on the terms and conditions set out herein, shall serve as a non-exclusive RESELLER of ACME Products in the geographical area of [*] (the "Territory") and the following vertical market(s) [*] (the "Designated Market");

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

1. DEFINITIONS.

- 1.1 Products. "Products" shall mean the object code copies of the software products listed in Schedule A and any subsequent updates and upgrades thereto, and all accompanying and associated Documentation, which RESELLER shall market and distribute in the Territory.
- 1.2 Customer. "Customer" shall mean an end--user of a Product in the Territory.
- 1.3 Documentation. "Documentation" shall mean program documentation, user manuals, handbooks and other materials describing the use, design, installation, operation and maintenance of the Products.
- 1.4 Trademarks. "Trademarks" shall mean the trademarks, service marks, trade names and logotypes authorized from time to time by ACME.

2. APPOINTMENT

- 2.1 Appointment. ACME hereby appoints RESELLER, and RESELLER hereby accepts appointment, as ACME's non-exclusive reseller of the Products in the Territory during the term of this Agreement.
- 2.2 License Grant. In exchange for payment of the participation fee referenced in Section 3.1, and subject to all the other terms and conditions of this Agreement, ACME hereby grants to RESELLER a non-exclusive and non-transferable right and license during the term of this Agreement in the Territory and with respect to the Designated Market only: (i) To market, promote, advertise, sell and distribute the Products directly to Customers; (ii) to

market, promote, advertise, sell and perform support and maintenance services related to the Products only under RESELLER's own name and not as a subcontractor of ACME; (iii) to use one copy of the Product to provide demonstrations to prospective Customers, so long as such copy is at all times under the control of RESELLER and not left with the prospective Customer; (iv) to use one copy of the Product to develop applications, connectors and other code compatible with the Product under additional terms set forth in Section 8 below and (v) distribute evaluation copies of the Products free of charge to prospective customers. RESELLER shall not (a) modify the Products or create derivative works thereof; (b) merge the Products with other software; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Products; (d) disclose to third parties the results of any bench tests performed on the Products without ACME's prior written consent; or (e) otherwise use, copy or distribute the Products except as expressly allowed hereunder.

2.3 Trademark License. In connection with RESELLER's activities authorized pursuant to this Agreement, RESELLER is granted a non-transferable, non-exclusive right to use the Trademarks in accordance with instructions given from time to time by ACME. RESELLER shall not attach any additional trademarks, service marks, or trade names to any Products and shall not use ACME's trademarks as part of RESELLER's trademarks, service marks or trade names or in any other manner that would tend to imply that RESELLER has an affiliation with ACME other than as set forth in this Agreement

2.4 Title. ACME and its suppliers retain the ownership of all right, title and interest in and to the Products, Documentation, Trademarks, and all patents, copyrights and other proprietary rights therein, and RESELLER shall acquire no rights therein except as expressly set forth in this Agreement. ACME shall own all rights, title and interest in all developments of and enhancements to the Products. RESELLER shall take no action, which may adversely affect or impair ACME's ownership of such materials and rights.

3. RESELLER'S GENERAL OBLIGATIONS.

3.1 Distribution Rights and Participation Fee. In exchange for the promise to pay ACME a one-time participation fee of fifty thousand dollars (\$50,000), RESELLER is authorized to distribute and deliver Products to Customers in the Designated Market in the Territory under the terms hereof and to identify itself in the market place as a "ACME authorized reseller". This fee shall be due and payable thirty days after receipt of invoice from ACME.

3.2 Marketing. RESELLER shall be responsible for the promotion and marketing of the Products. RESELLER will use its best efforts to further the interests of ACME and to maximize the markets for the Products in the Territory, including all local advertising. Furthermore, RESELLER shall use due diligence in safeguarding the interests of ACME and shall keep ACME informed of its activities as well as market conditions within the Territory.

3.3 Pricing. Pricing of Products to Customers shall be at the discretion of RESELLER.

- 3.4 End-User License Agreements and Evaluation Agreements. (a) RESELLER shall be responsible for entering into a binding end-user license agreement with Customer (“EULA”), which complies in all respects with the language, copyright and other laws of the country of distribution. The terms and conditions of the EULA, including but not limited to the warranties, limitations of liability and grant of license, and intellectual property provisions, shall be at least as restrictive as ACME’s standard terms and conditions, a current example of which is attached hereto as Schedule C, and shall specify (i) that RESELLER shall assume sole liability vis-à-vis the Customer for product performance; and (ii) that ACME shall be a third-party beneficiary of the EULA. RESELLER shall maintain a copy of the EULA for each Customer, and shall, promptly following execution of such agreements, provide ACME with a copy. (b) If RESELLER wishes to provide a prospective Customer with a copy of the Products for the sole purposes of evaluation, RESELLER may do so only under the terms of a binding agreement with the prospective Customer that (i) disclaims all performance warranties; (ii) is for a term of no more than 30 days, (iii) limits use to evaluation only, and (iv) is free of charge.
- 3.5 Enforcement of End User License Agreement and Evaluation Agreement. If RESELLER learns of any breach of a EULA or Evaluation Agreement that could damage ACME (or its third party licensors), RESELLER shall take prompt, commercially reasonable corrective action at its expense to remedy the breach and/or obtain all other appropriate relief and shall, in addition, immediately notify ACME in writing of the breach and corrective action taken. The execution of these duties by RESELLER shall not preclude ACME from also taking corrective action. In addition, if a breach of an EULA or an Evaluation Agreement occurs that would, in ACME’s opinion, result in irreparable harm to ACME (and/or its third party licensors) unless injunctive or other equitable relief is granted to restrain the violation, RESELLER shall, as requested by ACME, either (i) use its best efforts to obtain such equitable relief as promptly as reasonably possible or (ii) assign its rights under the EULA or Evaluation Agreement to ACME to permit ACME to seek such equitable relief. RESELLER’s foregoing obligations to enforce the EULAs or Evaluation Agreements as necessary to protect the interest of ACME and its third party licensors shall survive expiration or termination of this Agreement.
- 3.6 Compliance with Laws. At all times, RESELLER shall comply with all laws, rules, ordinances, decrees and regulations applicable to its activities under this Agreement. RESELLER shall indemnify ACME for any costs, expenses, injury and damage caused to ACME as a result of RESELLER's failure to comply with applicable laws, rules, ordinances, decrees and regulations.
- 3.7 Other Obligations. RESELLER shall have the following specific obligations with respect to the marketing and distribution of Products:
- 3.7.1 To use its best efforts to further the promotion, marketing, license and distribution of Products, including taking the necessary actions to protect against improper copying
- 3.7.2 To promptly respond to all inquiries from prospective Customers, including complaints, process all orders and affect all shipments of Products; and

3.7.3 To keep ACME fully informed in writing on a weekly basis of all inquiries and orders received by RESELLER from prospective Customers.

3.7.4 To provide ACME with a quarterly revenue forecast for each upcoming quarter.

3.8 Competing Products. Unless otherwise agreed in writing, during the term hereof, RESELLER shall not adapt, manufacture, sell, rent, distribute, market, promote or solicit the sale of any product in the Territory which is competitive with the Products without prior written consent from ACME.

3.9 Customer Satisfaction. The Products are technically complex and require high-quality, individualized pre-marketing and post-marketing support. This support is necessary to achieve and maintain high Customer satisfaction. RESELLER agrees that high Customer satisfaction is a condition of its continued authorization by ACME. RESELLER agrees that it will not market and sell the products in geographical areas where it does not have the ability to support them. In addition, in order to help ensure high Customer satisfaction, RESELLER agrees:

- To report to ACME promptly and in writing all suspected and actual problems with any Product;
- To maintain a shipment report identifying the Customer, the Product sold, the date of sale, and the quantities of the Products sold;
- To retain all shipment reports for three (3) years after the date of sale, and assist ACME, upon request, in tracing a product to a Customer in distributing critical product information, or in discovering unauthorized marketing or infringing acts;
- To conduct business in a manner that reflects favorably at all times on the products, goodwill and reputation of ACME;
- To avoid deceptive, misleading or unethical practices that are or might be detrimental to ACME or the ACME Products;
- To refrain from making any false or misleading representations with regard to ACME or the Products; and
- To refrain from making any representations, warranties or guarantees to customers with respect to the specifications, features or capabilities of the Products that are inconsistent with the literature distributed by ACME.

4. ACME'S GENERAL OBLIGATIONS.

4.1 Documentation. The Documentation shall be the most recent version distributed by ACME in the English language in the form of document files and one (1) set in hardcopy. RESELLER acknowledges that the Documentation is protected by copyright and may be reproduced or translated only as permitted in this Agreement. Any translations of Documentation are derivative works and are owned by ACME.

- 4.2 Marketing Materials. ACME agrees to provide, upon request, internally developed Product marketing communications materials via electronic media in the English language for translation and duplication, as appropriate, to RESELLER. ACME hereby grants to RESELLER the non-exclusive, non-transferable right to reproduce and use any such materials during the term of this Agreement, but not to modify such materials without prior written permission from ACME.
- 4.3 Compliance with Laws. At all times, ACME shall comply with all laws, rules, ordinances, decrees and regulations applicable to its activities under this Agreement.
- 4.4 Software Developer's Kit. ACME shall provide Reseller with a software development kit (the "SDK"), containing all APIs related to the Products as well as relevant development tools and examples of code and applications. ACME shall provide Reseller with support with respect to the SDK while this Agreement is in effect, in accordance with Schedule B-1 attached hereto.
- 4.5 Delivery. ACME shall deliver one copy of the Product to RESELLER, including software keys to enable use of the Product.

5. SUPPORT AND MAINTENANCE; TRAINING

- 5.1 Support with respect to Customers. RESELLER shall be solely responsible for providing first tier technical support to Customers as described in Schedule B. ACME shall provide RESELLER with second and third tier technical support with respect to Customers in accordance with Schedule B. RESELLER shall be responsible for all communications with Customer.
- 5.2 Service Level Objectives. If RESELLER offers to provide its Customers with support and maintenance that exceeds ACME's service level objectives as set out in Schedule B hereto ACME will not be obligated to support such service levels unless ACME has agreed to do so in writing. ACME will keep RESELLER informed as to ACME's schedule for new versions and releases of the Products.
- 5.3 Training. RESELLER shall ensure that each member of RESELLER's staff engaged in selling and supporting the Products, including sales representatives and sales engineers, is trained and certified by ACME within 90 days of the Effective Date. RESELLER shall bear all expenses incurred by or on behalf of its own staff in connection with the training, but shall be entitled to four man-days of training free, and to a thirty percent (30%) discount off of ACME's standard list prices for training in excess of four person-days. If any training upon request by RESELLER takes place elsewhere than at ACME's place of business, RESELLER shall bear all expenses incurred by ACME and its staff in relation to the offsite training, including expenses related to accommodation, meals and travel.
- 5.4 Updates and Upgrades. ACME will make Updates and Upgrades (as these terms are defined in ACME's standard terms and conditions) available to RESELLER when they become commercially available. RESELLER is responsible for distributing such Updates and Upgrades to Customers who subscribe to maintenance and support. At such time as an Update or Upgrade is made available, RESELLER will cease marketing and

distributing the previous version of the Product. Notwithstanding the foregoing, if RESELLER has developed any applications, connectors or other code under Section 2(iv) (hereinafter referred to as “Developments”) that are not compatible with updated or upgraded versions of the Product, then RESELLER may continue to distribute the previous version of the Product until such time as it has updated its Developments or for three months after the time an Update or Upgrade is made available, whichever occurs first. ACME may cease support of any version of the Product one year after a new version is made available, and RESELLER is advised to update, in a timely manner, any Development to the extent necessary for such code to be compatible with new versions of the Product.

6. REGISTRATION/ORDERING.

- 6.1 Product Registration. RESELLER is required to register all Customers of Products with ACME in accordance with then current ACME registration procedures.
- 6.2. Ordering. RESELLER shall order products from ACME on a customer by customer basis, by means of the ACME Product Order Form via telefax or electronic communications in accordance with the standard ACME ordering procedures. All orders shall be subject to ACME’s acceptance, which shall not be unreasonably withheld.

7. PAYMENT TERMS.

- 7.1 ACME shall make Products and associated maintenance and support available to RESELLER at thirty percent (30%) off ACME’s then-current list prices, which prices may change from time to time on thirty days written notice to RESELLER. ACME shall issue an invoice for ordered software and services which shall be payable by RESELLER within thirty days of receipt. Payment by RESELLER is due regardless of when or whether RESELLER is paid by its Customer. Late payments shall accrue interest at the rate of 12% annually, and RESELLER shall reimburse ACME for all costs of collection incurred.

All payments due hereunder are exclusive of all sales taxes, use taxes, value added taxes and any other similar taxes imposed by any federal, state, provincial or local governmental entity on the transactions contemplated by this Agreement, excluding taxes based upon ACME’s net income. When ACME has the legal obligation to pay or collect such taxes, the appropriate amount shall be invoiced to and paid by RESELLER unless RESELLER provides ACME with a valid tax exemption certificate authorized by the appropriate taxing authority.

In the event that any withholding taxes or any other similar taxes are imposed by any federal, state, provincial or local governmental entity on the transactions contemplated by this Agreement RESELLER shall pay such taxes in such amounts as are necessary to ensure that ACME receives the full amount of the fee required under the first paragraph of this Section 7.1.

- 7.2. Audit Rights. RESELLER agrees to allow ACME to examine its records to determine compliance or noncompliance with this Agreement. Any examination will be conducted

only by an authorized representative of ACME, such representative to be a qualified third party and will occur during regular business hours at RESELLER's offices and will not interfere unreasonably with RESELLER's business activities. A regional or national Certified Public Accounting firm or a law firm will automatically be deemed to be a qualified third party. Examinations will be made no more frequently than twice per contract year, and ACME will give RESELLER ten (10) business days or more prior written notice of the date of the examination and the name of ACME's authorized representative who will be conducting the examination. The audit will be conducted at ACME's expense unless the results of such audit establish that inaccuracies in the quarterly reports have resulted in underpayment to ACME of more than (5%) of the amount due in any quarter, in which case RESELLER shall pay within 30 days all amounts due and bear the expenses of the audit. In the event a second instance of a more than a 5% underpayment is discovered, ACME, at its option, will have the right to terminate the Agreement for cause with 15 days notice, in addition to any other rights ACME may have hereunder or at law. In the event a 5% underreporting is found, the examiner will give ACME an examination report containing the type of error(s), number of customers affected and the dollar amount. If it is discovered that the RESELLER has distributed the product through unauthorized agents or other third parties, the names of such agents, or third parties may be revealed to ACME.

- 7.3 Minimum Due. Each contract year that this Agreement is in effect (i.e., each twelve-month period starting on the Effective Date and each anniversary thereof), RESELLER shall order a minimum of \$200,000 of Software Products from ACME. This minimum amount shall be paid on the Effective Date and each anniversary thereof.

8. DEVELOPMENT RIGHTS AND OBLIGATIONS.

- 8.1 In connection with RESELLER's exercise of the rights set forth in Section 2.2(iv) above, ACME shall provide RESELLER with necessary APIs and documentation. In addition, RESELLER may obtain support from ACME's professional services department at hourly rates then in effect.
- 8.2 Prior to distributing any application, connector or other code developed under Section 2.2(iv) (hereinafter referred to as a "Development"), RESELLER shall provide such Development to ACME solely for purposes of testing and evaluation to determine compatibility between the Development and the Product. If ACME opts to perform such testing and evaluation, it shall treat the results thereof as confidential. If ACME, in its reasonable discretion, determines that the Development is not compatible with the Product, ACME may terminate this Agreement upon thirty days written notice if RESELLER fails to modify the Development so that it is compatible within that time frame.
- 8.3 RESELLER shall retain all rights to any Development that is not a derivative work, and shall indemnify and hold ACME harmless from any third party claims and resulting losses, costs, liabilities and expenses (including reasonable attorney's fees) related to Developments.

8.4 RESELLER shall modify Developments to the extent necessary for them to work with updated versions of the Product, within sixty days of updated versions being made available to RESELLER.

9. WARRANTY AND INDEMNIFICATION.

9.1 Limited Warranty. ACME warrants as follows:

9.1.1 ACME is the owner or licensee of all intellectual property rights in and to the Products and there is no pending litigation against ACME which could materially impact upon its ability to perform its obligations under this Agreement.

9.1.2 ACME has full power and right to license the Products and perform all other terms of this Agreement, and the use of the Products, or the exercise of the licenses granted hereunder, will not violate or interfere with the intellectual property or contractual rights of any third party, including without limitation, those rights arising under copyright, trademark, trade secret or patent law, provided, however that ACME shall not be liable for breach of representation and warranty if a violation or interference occurs by reason of software or content supplied by RESELLER, Customer, content owners, or other third parties.

9.1.3 Indemnification by ACME. ACME agrees to indemnify and hold harmless RESELLER from and against any and all third party claims and resulting losses, costs, liabilities, and expenses (including reasonable attorney's fees), arising as a result of or in connection with ACME's breach of any of the representations and warranties in Section 9.1.1 or Section 9.1.2 or of any representation or warranty contained in a EULA, provided (i) RESELLER promptly gives written notice of any claim to ACME; (ii) at ACME's expense, RESELLER provides any assistance which ACME may reasonably request for the defense of the claim; and (iii) ACME has the right to control of the defense or settlement of the claim. Notwithstanding the foregoing, ACME shall not be obligated to indemnify RESELLER to the extent the claim would not have arisen but for RESELLER's negligent or wrongful act or omission, or for claims arising out of the RESELLER's EULA if the RESELLER's EULA is less restrictive than ACME's standard terms and conditions set forth in Schedule C.

9.1.4 ACME warrants that, for a period of ninety (90) days from the delivery, the CD or other media on which the Products are furnished ("Media") shall be free from defects in materials and workmanship under normal use and service.

In the event that such media is proven to be defective, ACME's entire liability and RESELLER's sole and exclusive remedy shall be replacement of the media or such part of the media not meeting ACME's limited warranty, provided that RESELLER returns the media or such part of the media to ACME with a copy of RESELLER's dated receipt. If failure of the media or any part of the media has resulted from accident, abuse, or misapplication of the Products, then ACME shall have no obligation to replace the media or any such part of the media under this limited warranty.

9.1.5 Indemnification by RESELLER. RESELLER agrees to indemnify and hold harmless ACME from and against any and all third party claims and resulting losses, costs, liabilities, and expenses (including reasonable attorney's fees), arising as a result of or in connection with (i) any breach by RESELLER of its obligations under this Agreement; (ii) the negligent or intentional acts or omissions of RESELLER, its employees or agents, and (iii) any representation, warranty, promise or assurance made or granted by RESELLER to a Customer or prospective customer.

10. LIMITATION OF LIABILITY.

10.1 IN NO EVENT SHALL ACME AND IT LICENSORS OR RESELLER BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, WHICH MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER EITHER PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, OR WHETHER CLAIMS ARE BASED OR REMEDIES ARE SOUGHT IN CONTRACT OR TORT OR OTHERWISE.

10.2 EXCEPT AS SET FORTH IN SECTION 9.1, IN NO EVENT SHALL ACME'S OR ITS LICENSORS' TOTAL CUMULATIVE LIABILITY FOR ANY DAMAGES TO RESELLER OR ANY OTHER ENTITY EVER EXCEED THE AGGREGATE FEES PAID BY RESELLER TO ACME.

11. CONFIDENTIALITY.

11.1 Non Disclosure. The parties agree that any Confidential Information provided under this Agreement shall be held and maintained in strict confidence. Each party agrees to protect the confidentiality of such information in a manner consistent with the way a reasonable person would protect similar Confidential Information. "Confidential Information" means the information and materials noticed or marked by ACME or RESELLER as confidential and proprietary, or which should reasonably be understood as confidential and proprietary given the nature of the information or materials. "Confidential Information" does not include information that (i) is already known to the receiving party at the time it is disclosed and has not been obtained wrongfully, (ii) becomes publicly known without fault of the receiving party, (iii) is independently developed by the receiving party, (iv) is approved for release in writing by the disclosing party, (v) is disclosed without restriction by the disclosing party to a third party, or (vi) is disclosed pursuant to legal obligations beyond the control of the disclosing and receiving parties.

11.2 Legal Action. At ACME's request, RESELLER shall cooperate fully with ACME in any and all legal actions taken by ACME to protect its rights in the Products and in the ACME Confidential Information.

12. TERM AND TERMINATION.

12.1 Term. This Agreement shall take effect on the Effective Date and shall continue in force for two years (the “Initial Term”). Thereafter it will be automatically renewed for one (1) year renewal terms unless terminated by either party with 60-day notice prior to the end of the initial or any renewal term.

12.2 Termination. Notwithstanding the provisions of the foregoing, this Agreement may be terminated in accordance with the following provisions:

12.2.1 Either party hereto may terminate this Agreement at any time by giving notice in writing to the other party, which notice shall be effective upon receipt, should the other party be in material breach of this Agreement and fail to cure such breach within thirty (30) days of written notice thereof, file a petition of any type as to its bankruptcy, be declared bankrupt, become insolvent, make an assignment for the benefit of creditors, or go into liquidation or receivership or otherwise lose control over all or substantially all of its business.

12.2.2 Either party may terminate this Agreement for any reason only after the expiration of the Initial Term upon 90-day written notice to the other party.

12.3 Rights and Obligations on Termination or Expiration.

12.3.1 Termination or expiration of this Agreement shall not release either party from the obligation to make payment of all amounts then or thereafter due and payable.

12.3.2 Upon termination or expiration of this Agreement, RESELLER shall: (1) immediately return to ACME or destroy (i) all media containing the Products; (ii) all originals and copies of the Products, manuals, Documentation, product literature, fee schedules, and other written materials provided by ACME; or (iii) all Confidential Information and other property of ACME, provided that such materials or information are in RESELLER’s possession or under its control; (2) immediately discontinue holding itself out as a distributor of the Products, shall destroy all advertising and promotional materials in its possession or control bearing any Trademarks, and shall remove all signs bearing Trademarks or otherwise identifying RESELLER as a representative of ACME; and (3) deliver to ACME a document executed on behalf of RESELLER certifying RESELLER’s compliance with this Section.

12.3.3 Termination or expiration of this Agreement does not affect any sublicenses granted by RESELLER to Customers in accordance with this Agreement. However, in the event of such termination or expiration, ACME shall have the option of assuming first tier support for all then-current Customers, and RESELLER shall in such event refund to ACME a prorata share of all maintenance and support fees collected from such Customers, based on the time remaining in such Customers’ then-current maintenance and support term.

13. GOVERNING LAW

This Agreement shall be governed by, and interpreted and construed in accordance with, the substantive laws of the Commonwealth of Massachusetts, conflicts of law excluded. Both parties hereby irrevocably submit any disputes under this Agreement to the jurisdiction of the state and Federal courts located in Boston, Massachusetts.

14. MISCELLANEOUS.

- 14.1 Relationship. This Agreement does not make either party the employee, franchisee, agent or legal representative of the other for any purpose whatsoever. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party. In fulfilling its obligations pursuant to this Agreement each party shall be acting as an independent contractor.
- 14.2 Assignment. RESELLER shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of ACME. Any prohibited assignment shall be null and void. ACME may transfer its rights and obligations hereunder to any company or other legal entity that is controlled by, controls or is under common control with ACME. This Agreement shall inure to the benefit of and shall be binding on the successors and permitted assigns of the parties.
- 14.3 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous agreements by and between the parties as well as all proposals, oral or written and all negotiations, conversations or discussions heretofore had between the parties related to the subject matter of this agreement. The parties acknowledge that they have not been induced to enter into this agreement by any representations or statements, oral or written, not expressly contained herein.
- 14.4 Amendment. This Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived, in whole or in part, except by written amendment signed by the parties hereto.
- 14.5 Severability. In the event that any of the terms of this Agreement are in conflict with any applicable rule of law or statutory provision or otherwise unenforceable under applicable laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement and this Agreement shall continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.
- 14.6 Counterparts. This Agreement shall be executed in two or more counterparts, and each such counterpart shall be deemed an original hereof. Any translation of this Agreement into any other language shall be for convenience purposes only and shall not be binding on any party.

14.7 Delay or Omission Not Waiver. No delay or failure by either party to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

14.8 Export. RESELLER may not download or otherwise export or re-export any underlying software, technology or other information from the Product except in full compliance with all U.S. and other applicable laws and regulations. In particular, but without limitation, none of the underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which Norway or the U.S. has embargoed goods or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's or State Department's Table of Denial Orders.

14.9 No Third Party Beneficiaries. No entities not a party to this Agreement shall be deemed third party beneficiaries hereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

ACME, Inc.

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Schedule A

Products

Schedule B

ACME Product Support

1. SUPPORT

This Schedule sets forth the interface between ACME and RESELLER regarding the resolution of problems with the ACME Product.

Annual Maintenance and Support Fee(s) shall entitle the RESELLER to the maintenance services described in the Terms and Conditions as well as telephone, e-mail and Web-based support as defined in this Schedule, for Customers who purchase maintenance and support. By way of example, the Annual Maintenance and Support Fee does not include on-site technical support, Tier 1 support, training, professional services or related travel expenses.

A. When and How ACME will Respond to Requests for Problem Resolution

A knowledgeable ACME support engineer will respond to RESELLER's request for problem resolution based on the case severity level, as described below.

1. Support Response Objectives

Case Severity	Standard Support	Premium Support
1	Within 2 hours after logging the issue, provided the issue is reported between 9:00 CET and 23:00 CET (i.e., between 3:00 am EST and 5:00 pm EST) Monday through Friday excluding holidays. Issues reported during the above hours will be responded to the following business day.	Within 1 hour after logging the issue and calling the emergency hotline.
2	Within 2 working days after logging the issue.	Within next working day after logging the issue.
3	Within 1 working week after logging the issue.	Within 1 working week after logging the issue.

2. Problem Resolution

Resolution will consist of either a Work Around, an Interim Solution or a Permanent Solution. Problems that require an Interim Solution will be considered resolved when the test used to reproduce the problem demonstrates the corrected behavior. Note: ACME is not responsible for resolving problems arising from errors in equipment or software not provided by ACME or errors made by individuals who are not ACME employees or contractors.

3. Resolution Objectives

Case Severity	Work Around	Interim Solution	Permanent Solution
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Case Severity	Work Around	Interim Solution	Permanent Solution
1	Standard Support: Provided within 5 working days.	Standard Support: Provided within 2 working weeks if no Work Around is possible.	Standard Support: Included in next release.
	Premium Support: Provided within 48 hours.	Premium Support: Provided within 1 working week if no Work Around is possible.	Premium Support: Included in next release.
2	Standard Support: Provided within 2 working weeks.	Standard Support: Provided within 1 working month.	Standard Support: Included in next release.
	Premium Support: Provided within 1 working week.	Premium Support: Provided within 1 working month.	Premium Support: Included in next release.
3	Next release.	N/A	When deemed feasible by ACME.

4. Severity Definitions

Severity Level	Description
1	A Severity 1 problem exists if any ACME Product or major function thereof is (i) inoperative, or (ii) is experiencing terminable/intermittent problems that is having a significant impact on the Customer's ability to use the ACME Product.
2	A Severity 2 problem exists if functionality of the ACME Product is found to be defective or absent, or contains a problem that renders ACME Product difficult, but not impossible to use.
3	A Severity 3 problem exists if the Customer experiences a non-critical degradation of performance, or experiences minor problems that need correction in either ACME Product or the relevant ACME product manuals.

5. Escalation within ACME

Once ACME Technical Product Support is notified as above, the ACME support organization will be notified and will start verifying the problem. Once the problem is verified by the ACME support organization, the request will be handed over to product development if no resolution is immediately available.

The assigned support engineer follows up the issue internally within ACME and will according to the resolution objectives set forth above attempt to send out work-arounds and Interim or Permanent Solutions.

B. Definitions

“**Bug**” means an inconsistency between ACME Product behavior and ACME Product Documentation.

“**Interim Solution**” means a short-term code-fix delivered as a hotfix or a patch from ACME to the customer.

“**Permanent Solution**” means, an Update of the ACME Product in which the problem has been resolved to conform 11232010

to the ACME Product specification contained in the Documentation.

“**Reproducible Test Case**” means a test case that demonstrates in a small code sample, usually less than 100 lines, or in a detailed textformat, the specific syntax or case that causes the problem. The test case must demonstrate the inconsistencies with the ACME Product Documentation.

“**Work Around**” means a temporary solution to a problem. A Work Around will be replaced with a Permanent Solution unless otherwise agreed to by Customer.

Other capitalized terms have the meanings assigned to them in the Agreement.

Schedule B 1

ACME SDK Support

ACME SDK Support

This Schedule sets forth the interface between ACME (ACME) and the RESELLER regarding the resolution of problems with the ACME Product Software Development Kit (“SDK”).

The SDK is a toolbox containing all APIs related to ACME Product as well as relevant development tools and code/application examples. By way of example, SDK Support does not include on-site technical support, training, professional services or related travel expenses.

Schedule C

ACME'S Standard Terms and Conditions

NOTE: the terms and conditions found on the following pages are the terms and conditions for the perpetual license versions of ACME's Software. The terms and conditions for the two year license versions of ACME software are slightly different, given that the license is for an initial term of 2 years with maintenance and support included in the license fee.

1. Definitions

In this License Agreement the following words and expressions have the following meanings:

- (1) "Add-on Module" shall mean software module(s) that at any time may be added on to the Base Package as further described in Schedule A hereto;
- (2) "Affiliate" shall mean in relation to any party, any company or other legal entity, that is controlled by, controls or is under the common control with the party;
- (3) "Annual Maintenance and Support Fee" shall mean the amount identified as such in the Order Form;
- (4) "Base Package" shall mean the base package of Licensed Software as further described in Schedule A hereto;
- (5) "Capacity Increase" shall mean the additional capacity increase to the Licensed Software that may be obtained by a Customer during the term of this License Agreement, as set out in Schedule A hereto;
- (6) "Documentation" shall mean all related user documentation and manuals, in whatever medium, regarding the proper installation and use of the Licensed Software;
- (7) "Effective Date" means the day and year written in the signature field for ACME in the acceptance section in the Order Form;
- (8) "Total Software License Fee" shall mean the aggregate fee set forth in Order Form Section 1.5;
- (9) "License Agreement" shall mean all

contractual documents as defined in the Order Form;

- (10) "Licensed Software" shall mean licensed computer software identified as such in the Order Form together with the Documentation;
- (11) "Term" shall have the meaning set forth in Section 19 of the Terms and Conditions;
- (12) "Upgrade" shall mean the release of a version of the Licensed Software containing major changes to the structure of the Licensed Software where important new features may be added. The change to an Upgrade will be recognized by an increase in value of the primary version number (e.g. version 3.x to be replaced by version 4.x);
- (13) "Update" shall mean the release of a version of the Licensed Software containing improvements and adjustments to the Licensed Software, however not including major structural changes and/or new important features. The change to an Update will be recognized by an increase in value of the secondary version number (e.g. version 3.0 to be replaced by version 3.1).

2. License Terms

ACME grants to the Customer a perpetual (except as otherwise provided herein), non-exclusive, non-transferable and non-sublicensable license ("License") to use the Licensed Software within the limits for source data volume and queries per second set forth in the Order Form and Schedule A, in object code or other machine executable format and the Documentation during the Term and according to the terms and conditions set out herein.

Customer may copy the Licensed Software for back-up or archival purposes, provided that any copy contains all of the original Licensed Software's proprietary notices. **Customer may not:** (i) permit other entities or individuals to use the Licensed Software except under the terms listed herein, (ii) modify, translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction and provided that Customer has first requested from ACME the tools necessary to create interoperable programs), or create derivative works based on the Licensed Software, (iii) copy the Licensed Software (except as specified herein), (iv) export, directly or indirectly, the Licensed Software to any person or entity outside the United States in violation of applicable U.S. export laws, (v) sell, rent, lease, or otherwise transfer rights to the Licensed Software, (vi) remove any proprietary notices or labels on the Licensed Software, (vii) separate, remove or replace any components of the Licensed Software provided by third parties ("Component Software"); use any Component Software independently of the Licensed Software; or use the Licensed Software without the Component Software.

If Customer has purchased a Developer's license (as indicated on the Order Form) Customer may use one copy of the licensed software and the Software Developer's Kit to develop and test custom enhancements. This also includes support for developers in accordance with Schedule B-1 for so long as the customer is subscribing to Maintenance and Support hereunder.

If Customer has purchased a non-production non-development license (as indicated on the Order Form), Customer may use one copy of the licensed software for quality assurance, testing or hot-standby use.

3. Installation of Upgrade and Update

The Terms and Conditions of this License Agreement shall apply to the initial copy of the Licensed Software as well as to any Upgrade or Update to the Licensed Software subsequently delivered to Customer. Customer must destroy all previous copies of the Licensed Software, however duplicated or archived, within thirty (30) days of installation of the Upgrade or Update. If the Upgrade or Update is to a Component Software of the Licensed Software, it may be used only as part of the single Licensed

Software package and may not be separated for individual use.

4. Maintenance and Support

For one year from the Effective Date, Customer shall purchase maintenance and support services from ACME with respect to all software licensed hereunder. The Annual Maintenance and Support Fee entitles customer to the Support services described in Schedule B and the following maintenance services: (i) notification of and access to ACME software patches and documentation released by ACME; and (ii) notification of and access to Updates and Upgrades. Maintenance services do not include new modules released by ACME that include significantly different features and functionality, which are packaged and marketed as separate modules.

The Annual Maintenance and Support Fee is due and payable in advance at the time of payment of the Total Software License Fee. The Customer may elect between different levels of support, the alternatives of which are set out in Schedule B.

The Annual Maintenance and Support Fee in subsequent years shall be due and payable on each anniversary of the Effective Date, unless Customer notifies ACME in writing sixty (60) days in advance of such anniversary that Customer desires to terminate maintenance and support. If Customer terminates maintenance and support, ACME shall be under no obligation to resume providing such services to Customer under any circumstances.

If Customer licenses Add-on Modules or Capacity Increases effective on any date other than the Effective Date or any anniversary thereof, the Annual Maintenance and Support Fee for such Add-on Modules or Capacity Increases shall be pro-rated for the remainder of the year in question.

Under no circumstances will ACME be responsible for supporting or correcting any errors in the Licensed Software resulting from any modifications made to the Licensed Software by Customer, and ACME will not be liable for any loss or damage of any nature directly or indirectly caused by such modifications. Customer must install Updates that contain bug-fixes in order to receive Maintenance and Support.

ACME may, at its sole discretion, cease providing Maintenance and Support for any prior version of the Licensed Software six (6) months after an Upgrade is made available.

Furthermore, at such time as ACME decides to cease maintaining and supporting the Licensed Software for its entire customer base, ACME may cease providing Maintenance and Support two years after such decision is communicated by written notice to Customer.

5. License Fees

5.1. Invoices

ACME shall invoice the Customer in respect of the Total Software License Fee(s) on the Effective Date.

5.2. Future Purchases

The Customer may purchase additional Base Packages, Add-on Modules and/or Capacity Increases upon payment to ACME of the fees therefore then in effect.

6. General Payment Conditions

Payment of Total Software License Fee, Annual Maintenance and Support Fee and any other fees shall be made by electronic wire transfer to a bank account to be designated in writing by ACME. Any invoices shall be due and payable within 28 days of the invoice date.

Overdue payments shall bear interest at the rate of 12% annually, or the maximum permitted by applicable law, whichever is less, and Customer shall reimburse ACME for all costs ACME incurs attempting to recover payments due.

The Total Software License Fee, Annual Maintenance and Support Fee and any other fees are up-front non-refundable fees.

All fees, of whatever kind, are exclusive of all sales taxes, use taxes, value added taxes and any other similar taxes imposed by any federal, state, provincial or local governmental entity on the transactions contemplated by this Agreement, excluding taxes based upon ACME's net income. When ACME has the legal obligation to pay or collect such taxes, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides ACME with a valid tax exemption certificate authorized by the appropriate taxing authority.

In the event that any withholding taxes or any other similar taxes are imposed by any federal, state, provincial or local governmental entity on the transactions contemplated by this License Agreement Customer shall pay such taxes in such amounts as are necessary to ensure that ACME receives the full amount of the then due fees.

7. Delivery

ACME shall deliver one copy of the Licensed Software to Customer, including software keys to enable use of the Licensed Software, unless otherwise expressly stated in the Order Form.

8. Audit Right

ACME or its designee shall have the right to have a reputable third party inspect Customer's data processing systems and records for the sole purpose of verifying that Customer has complied with these Terms and Conditions and reporting its findings to ACME. Such inspections will be made on not less than ten (10) days written notice, during regular business hours. If the inspection reveals an underpayment to ACME of license fees, the Customer shall pay to ACME the deficit. ACME shall bear the expense of such inspection unless the inspection reveals license fees that vary more than five percent (5%) from the license fees paid to ACME, in which case the Customer shall bear the costs associated with the inspection.

9. Limited Warranty

9.1 ACME is the owner or licensee of all intellectual property rights in and to the Licensed Software and there is no pending litigation against ACME which could materially impact upon its ability to perform its obligations under this License Agreement.

9.2 ACME has full power and right to license the Licensed Software and perform all other terms of this License Agreement, and the use of Licensed Software, or the exercise of the licenses granted hereunder, will not violate or interfere with the intellectual property or contractual rights of any third party, including without limitation, those rights arising under copyright, trademark, trade secret or patent law, provided, however that ACME shall not be liable for breach of representation and warranty if a violation or interference occurs by reason of content supplied by Customer, content owners, end users or other third parties.

9.3 ACME warrants that, for a period of ninety (90) days from the Effective Date, the CD or other media on which the Licensed Software is furnished ("Media") shall be free from defects in materials and workmanship under normal use and service.

9.4 In the event that such media is proven to be defective, ACME's entire liability and Customer's sole and exclusive remedy shall be replacement of the media or such part of the media not meeting ACME's limited warranty, provided that Customer returns the media or such part of the media to ACME with a copy of Customer's dated receipt. If failure of the media or any part of the media has resulted from accident, abuse, or misapplication of the Licensed Software, then ACME shall have no obligation to replace the media or any such part of the media under this limited warranty.

9.5 For a period of ninety (90) days from the Effective Date, ACME warrants that the Licensed Software will substantially conform to the Documentation. Without cost to Customer, ACME shall correct any failure of the Licensed Software to conform to the foregoing warranty if the failure is reported in writing in accordance with the Notices Section during the warranty period. If ACME is unable to modify the Licensed Software so that it substantially conforms to the Documentation, Customer's sole and exclusive remedy is to receive a full refund of all amounts paid hereunder upon return of the Licensed Software.

9.6 ACME shall have no obligation or other liability with regard to any error or non compliance with the warranties set forth above that is caused, in whole or in part by; (a) modifications or alterations to the Licensed Software made by the Customer; (b) use of the Licensed Software by the Customer other than as contemplated herein; (c) products or services not provided by ACME; (d) the negligence or willful misconduct of Customer; (e) the Customer's implementation and installation of the Licensed Software other than in accordance with instructions furnished by ACME; or (f) electrical malfunction. ACME shall have no liability to the Customer under this license agreement, or otherwise, by reason of content supplied by the Customer, content owners, end users or other third parties.

10. Indemnification

ACME agrees to indemnify and hold harmless the Customer from and against any and all third party claims or actions, including any losses, costs, liabilities, reasonable attorney's fees and other expenses arising from such claim or action, alleging that the Licensed Software infringes or violates any copyright, trademark, patent or trade secret of a third party, provided: (i) the Customer promptly gives written notice of any claim to ACME; (ii) the Customer provides any assistance which ACME may reasonably request for the defense of the claim; and (iii) ACME has the right to control of the defense or settlement of the claim. In any action based on an Infringement Claim, ACME may, at its sole option, either: (x) obtain for Customer the right to continue using the Licensed Software, (y) replace or modify the Licensed Software with non-infringing software providing substantially the same functionality, or (z) terminate the license granted hereunder and give Customer a pro-rata refund of the license fee paid for the Licensed Software, calculated on the basis of straight line depreciation over three years.

11. Disclaimer of Warranties

THE LICENSED SOFTWARE IS PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EXCEPT AS STATED IN SECTION 9. THE ENTIRE RISK AS TO THE RESULT AND PERFORMANCE OF THE LICENSED SOFTWARE IS ASSUMED BY CUSTOMER. EXCEPT AS STATED IN SECTION 9, ACME AND ITS LICENSORS AND SUPPLIERS MAKE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE LICENSED SOFTWARE OR THE USE OR OPERATION THEREOF AND SPECIFICALLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. Limitation of Liability

Except with respect to claims relating to breach of the confidentiality provisions herein, intellectual property infringement or use of the software by Customer outside of the scope of the license granted herein, under no circumstances shall either party's aggregate liability to the other party arising out of or related to this License Agreement exceed the lesser of (i) the aggregate fees due or paid to ACME from Customer at the time of such Party's claim or (ii) the actual damages sustained by such party, regardless of whether any action or claim is based on warranty, contract, tort or otherwise. Each party

hereby releases the other party from all obligations, liability, claims or demand in excess of this limitation.

Neither ACME nor its licensors and suppliers, nor Customer, shall be liable for any special, indirect, incidental, or consequential damages, including, but not limited to, any loss of revenues, lost profits, loss of or inaccuracy of data, or lost or interrupted business, however caused and whether based in tort (including negligence), contract, or any other theory of liability, even if such entity has been advised of the possibility of such damages.

This limitation of liability shall apply to the maximum extent permitted by law.

13. Customer's Representations and Warranties

Customer represents and warrants that it has the right to enter into this License Agreement, that Customer is a corporation duly organized and existing (and in good standing) under the laws of the country or state of its incorporation and has the power and authority (corporate or otherwise) to execute and deliver this License Agreement.

14. Title

Title, ownership rights, and any and all intellectual property rights in and to the Licensed Software shall remain in ACME and/or its licensors and suppliers. The Licensed Software is protected by copyright laws and international copyright treaties. Title, ownership rights, and intellectual property rights in and to the content accessed through the Licensed Software is the property of the applicable content owner and may be protected by applicable copyright or other law. This License Agreement gives Customer no rights to such content. Except as expressly provided herein, all right, title and interest in and to the Licensed Software remains with ACME and its licensors and suppliers.

15. U.S. Government-Restricted Rights

The Licensed Software is a "commercial item" as that term is defined in 48 CFR 12.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 (Sept. 1995). Consistent with 48 CFR 12.212 and 48 CFR 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those

rights explicitly set forth herein.

16. Purchases in Canada

If the Licensed Software is purchased in Canada, Customer agrees to the following: The parties hereto confirm that it is their wish that this license as well as any other documents relating hereto, including notices, has been and shall be written in the English Language (Les parties aux présentes confirment leur volonté que cette License de même que tous les documents y compris et tout avis qui s'y rattache soient rédigés en langue anglaise).

17. Press Releases and Other Promotions

The parties may publish press releases concerning the existence of this License Agreement and the terms hereof with the other party's written consent which may not be unreasonably withheld. Otherwise no public statements concerning the existence or terms of the License Agreement will be made or released to any medium except with the prior approval of both parties or as required by statute or regulation.

18. Confidential Information

During the term of this License Agreement and thereafter, each party will use and reproduce the other party's Confidential Information only for the purposes of this Agreement and will restrict disclosure of the other party's Confidential Information to its employees, Affiliates and employees of Affiliates, with a need to know who are under a binding obligation to comply with the restrictions set forth in this Section 18 and will not disclose the other party's Confidential Information to any third-party without the prior written approval of the other party. Notwithstanding the foregoing, it will not be a breach of this License Agreement for either party to disclose Confidential Information of the other party if required to do so under law or in a judicial or other governmental investigation or proceeding, provided that the other party has been given prior notice and the disclosing party has sought all available safeguards against widespread dissemination prior to such disclosure.

As used in this License Agreement, the term "Confidential Information" refers to: (i) the prices set forth in this License Agreement; (ii) each party's trade secrets, business plans, strategies, methods and/or practices; (iii) any other

information relating to either party or its business that is not generally known to the public, including but not limited to information about either party's personnel, products, customers, marketing strategies, services, pricing or future business plans. Notwithstanding the foregoing, the term "Confidential Information" specifically excludes (A) information that is now in the public domain or subsequently enters the public domain by publication or otherwise through no action or fault of the other party; (B) information that is known to either party without restriction, prior to receipt from the other party under this License Agreement, from its own independent sources as evidenced by such party's written records, and which was not acquired, directly or indirectly, from the other party; (C) information that either party receives from any third party reasonably known by such receiving party to have a legal right to transmit such information, and not under any obligation to keep such information confidential; and (D) information independently developed by either party's employees or agents provided that either party can show that those employees or agents had no access to the Confidential Information received hereunder.

19. Term and Termination

19.1. Term

This License Agreement will become effective on the Effective Date and will remain in effect until terminated in accordance with the following paragraph.

19.2. Termination

Either party may terminate this License Agreement forthwith if the other party materially defaults under this License Agreement and fails to cure such default within 45 days after receipt of written notice of such default from the other party.

Either party may terminate this License Agreement forthwith if the other party files a petition for bankruptcy, or makes an assignment for the benefit of the creditors, or a receiver is appointed for the other party or its business.

19.3. Results of Termination

All Licenses granted herein shall become null and void upon the termination of this License Agreement. Following the termination of this

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License Agreement, for whatever reason, Customer shall return to ACME any and all software program documentation or any other materials, copies or reproductions of the foregoing, relating to the Licensed Software, and Upgrade(s), Update(s) and enhancements thereto. Further, upon termination of this License Agreement, both parties shall promptly, and in any event within 30 days following termination, return to the other party all other property and Confidential Information belonging to the other, in all forms partial and complete, in all types of media and computer memory, and whether or not merged with other materials, or to the extent such return is not reasonably practical, will destroy the foregoing and provide the originating party with a certificate by an officer of the company certifying destruction.

20. Force Majeure

Neither party shall be liable to the other for any delay or non-performance of its obligations hereunder in the event and to the extent that such delay or non-performance is due to an event of Force Majeure.

Events of Force Majeure are events beyond the control of the party which occur after the time of signing of this License Agreement and which were not reasonably foreseeable at the time of signature of this License Agreement and whose effects are not capable of being overcome without unreasonable expense or loss of time to the party concerned. Events of Force Majeure shall include (without being limited to) war, acts of government, natural disasters, fire and explosions.

21. Independent Contractors

Nothing in this License Agreement shall create, evidence or imply any agency, partnership or joint venture between the parties. Neither party shall act or describe itself as the agent of the other nor shall it represent that it has any authority to make commitments on the other's behalf.

22. Severability

If any provision of this License Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable then the remaining provisions of this License Agreement shall continue in full force and effect. The judicial or other competent

authority making such determination shall have the power to limit, construe or reduce the duration, scope, activity and/or area of such provision, and/or delete specific words or phrases as necessary to render such provision enforceable.

23. Assignment

Either party shall have the right, at its own discretion and at any given time during the Term of this License Agreement, to assign the License Agreement to an Affiliate. ACME may assign this License Agreement to any successor of ACME. The Customer may assign this License Agreement to any successor of the Customer, provided, however, that the successor is not a competitor of the business and affairs of ACME.

24. Counterparts

This License Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

25. Notices

Except as may be otherwise provided herein, all notices, requests, demands, waivers and other communications made pursuant to this License Agreement shall be in writing and shall be conclusively deemed to have been duly given upon receipt: (i) if delivered by hand or (ii) if delivered by DHL or similar internationally recognized overnight courier or (iii) if delivered by certified mail return receipt requested.

Notices are to be sent to ACME to the address at stated on top of the Order Form, Attn. Legal Department. A copy of the notice shall be sent to ACME Inc., Attn. Legal Department, 1 Worcester Street, Wellesley, MA 02481, USA. Notices to the Customer are to be sent to the address set out in the Order Form.

26. Choice of Law and Forum

This License Agreement, its interpretation, performance or any breach thereof, will be construed in accordance with, and all questions with respect thereto will be determined by, the laws of the Commonwealth of Massachusetts. Both parties hereby irrevocably submit any disputes under this License Agreement to the jurisdiction of the courts located in the Commonwealth of Massachusetts.

27. Miscellaneous

This License Agreement represents the complete agreement concerning the subject matter hereof and supersedes all prior agreements and representations between the parties.

This License Agreement may only be amended in writing, executed by both parties.

28. Survival

All terms of this License Agreement that by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assigns.