



MASTER SOFTWARE LICENSE TERMS AND CONDITIONS

NOTICE

THESE TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING, INSTALLING, OR USING ANY LICENSOR SOFTWARE.
THESE TERMS AND CONDITIONS CONTAIN RELEASES, INDEMNITIES AND WARRANTY DISCLAIMERS WHICH ABSOLVE
WEATHERFORD FROM THE CONSEQUENCES OF ITS OWN NEGLIGENCE.
READ THEM CAREFULLY.

1. DEFINITIONS AND GENERAL TERMS

- 1.1 **Definitions.** In addition to terms defined elsewhere, the following terms shall have the following meanings, unless the context otherwise clearly requires:

"Affiliate" or "Affiliates" means any Person directly or indirectly controlled by, controlling, or under common control with a Party, including any of the foregoing which becomes an Affiliate after the Effective Date. **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **"Controlling"** and **"controlled"** have correlative meanings.

"Applicable Law" means those laws (common or statutory), rules, regulations, codes, administrative and judicial orders and directives, rulings, interpretations, permit conditions and restrictions or similar requirements or actions of any federal, state, provincial, or local government, or any agency or executive or administrative body of any of the foregoing, in each case that govern or pertain, as of the date of the applicable Order, to: (a) the Parties' respective obligations under these Terms and Conditions or any Order; (b) Licensor's Intellectual Property Rights in and to the Software and Documentation; and/or (c) Licensee's use of the Software, Documentation and/or Professional Services.

"Authorized User" means each of the individuals authorized to use the Software pursuant to **Section 2.2** and the other Terms and Conditions hereunder, including an applicable Order.

"Claim(s)" means all claims (including those for property damage, environmental damage, personal injury, illness, disease, maintenance, cure, loss of consortium, loss of support, or death), damages, liabilities (including contractual liabilities), losses, demands, liens, encumbrances, government imposed fines and/or penalties, causes of action of any kind, obligations, costs, judgments, interest and awards (including payment of reasonable attorneys' fees and costs of litigation), of any kind or character, whether under judicial proceedings, administrative proceedings or otherwise, arising out of, or in any way relating to these Terms and Conditions or Licensor's performance under any Order, and expressly including any claims that may be brought by (or losses suffered by) spouses, heirs, survivors, legal representatives, successors or assigns.

"Covered Asset(s)" means any Licensee owned or operated well, field or reservoir for or with respect to which the Software is used to collect, store, process, analyze or model data or information.

"Designated Site(s)" means any of Licensee's sites, facilities or wells, as set forth in an Order and/or Statement of Work.

"Documentation" means any and all manuals, instructions and other documents and materials that Licensor provides or makes available to Licensee in any form or medium which describe the functionality, components, features or requirements of the Software, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

"Effective Date" means the date these Terms and Conditions hereunder were accepted.

“**EULA**” means Licensor’s standard End-User License Agreement, which can be accessed, viewed, and downloaded at <http://www.weatherford.com/t&c/EULA>, as same may be modified by Licensor from time-to-time.

“**Indemnify**” or “**Indemnification**” means indemnify, defend and hold harmless.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any intangible property rights, including without limitation, any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world including, without limitation, any ideas, concepts, know-how, techniques, processes, reports, or works of authorship owned, developed or created by Licensor.

“**Licensee**” means the Person accepting these Terms and Conditions and any Affiliate(s) thereof specifically identified in an Order. A Person that is an Affiliate of Licensee (and has been specifically identified as such in an Order) shall be entitled to the rights and benefits of Licensee under these Terms and Conditions only for that period of time such Person qualifies as an Affiliate and has not undergone a Change of Control, as defined in **Section 18.2**.

“**Licensor**” means Weatherford U.S., L.P. and/or any Affiliate thereof identified as Licensor in an Order or Statement of Work.

“**Licensor Work Product**” has the meaning set forth in **Section 5.6**.

“**Maintenance Services**” has the meaning set forth in **Section 4.1**

“**New Release**” or “**Upgrade**” means any new version of the Software that Licensor may, from time-to-time after the Effective Date, introduce, which implements additional features or functions, or which produces substantial and material improvements with respect to the utility, efficiency and/or functionality of the Software, which Licensor may make available to Licensee at an additional cost under a separate Order. The terms New Release and Upgrade do not mean or include a Patch or Update.

“**Order**” means a written agreement between the Parties, substantially in the form of **Schedule A** attached hereto and made a part hereof, wherein Licensee orders certain Software, Maintenance Services, and/or New Releases Services pursuant to these Terms and Conditions. A Statement of Work, as defined below, may constitute an Order or may be referenced in a combined order for Software and/or Maintenance Services. Each new Order may reference any prior Orders and the Software (and Maintenance Services) covered thereby.

“**Patch**” or “**Update**” means a modification of the Software, including any updated Documentation, that Licensor may provide to Licensee from time-to-time during the term of an Order, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software, but does not include any New Release. Licensor shall determine, in its reasonable discretion, whether any enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software constitute a New Release/Upgrade or a Patch/Update.

“**Permitted Use**” means use of the Software by an Authorized User for the benefit of Licensee in the ordinary course of Licensee’s internal business operations and as set forth in an Order.

“**Person**” means any legal or governmental entity and any natural person.

“**Professional Services**” has the meaning set forth in **Section 5.1**.

“**Representatives**” means, with respect to a Party, that Party's employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors and legal advisors.

“**Software**” means the current version and release number of the software described in an Order, in object and/or executable code form, together with any Licensor Work Product, Patch, Update, New Release and/or Upgrade provided to Licensee pursuant to these Terms and Conditions and an Order. Software also includes modules or features made available for license/purchase separately, which provide additional functionality not present in the base Software.

“Statement of Work” means a written statement of work for the performance of Professional Services (as defined in **Section 5.1**) that: (a) describes the nature and scope of the Professional Services to be performed and/or the work product and/or deliverables to be delivered by Licensor; (b) sets forth the compensation to be paid by Licensee for the Professional Services; (c) expressly references these Terms and Conditions; and (d) has been executed by both Licensor and Licensee.

“Third Party” means any Person other than Licensor, Licensee or any of their respective Affiliates.

“Warranty Period” has the meaning set forth in **Section 12.2**.

- 1.2 **General Terms.** As used in these Terms and Conditions, unless expressly stated otherwise, references to: (a) “includes” or “including” means “including, without limitation” or “including, but not limited to”; (b) “and/or” means “either or both”; (c) “or” means “either” and (d) a “party” or “Party” mean Licensor or the Licensee and to the “parties” or “Parties” mean Licensor and the Licensee. Unless otherwise specified, all references in these Terms and Conditions to Articles, Sections or Exhibits are deemed references to the corresponding Articles, Sections or Exhibits in these Terms and Conditions.

2. LICENSE.

- 2.1 **License Grant; Term of License.** Subject to these Terms and Conditions and the Order applicable to the Software, and conditioned on Licensee's and its Authorized Users' compliance with the foregoing, Licensor hereby grants to Licensee a non-exclusive, non-sublicensable and non-transferable, limited license to use the Software and Documentation solely for the Permitted Use during the term specified in the Order applicable to the licensed Software. For the avoidance of doubt, Licensee acknowledges and agrees that a license to any Patch, Maintenance Service and/or New Release to the Software shall be provided only if specifically acquired by Licensee or included by Licensor in an Order and/or Statement of Work.

- 2.2 **Scope of Licensed Access and Use.** Subject to these Terms and Conditions and in accordance with an applicable Order, Licensee may install, use and/or run the Software on: (a) up to the number of computer(s) specified in a given Order; or (b) on Licensee's network, the internet and/or a cloud based server for use by up to the number of Authorized User(s) specified in a given Order at the Designated Site(s), whichever is applicable. An Order may indicate an authorized number of Authorized User(s) at one time that may access and use the Software from any other device. Except for Software that is tracked by Licensor on a total client number, network or site wide basis, Licensee shall provide written notice to Licensor of the name and contact information of each new Authorized User not set forth in an applicable Order, and of any individuals who are no longer Authorized Users, immediately upon adding, removing or replacing any Authorized User. The total number of Authorized Users and/or Designated Site(s), if applicable, shall not exceed the number set forth under an applicable Order, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the license fees payable hereunder.

- 2.3 **Use Restrictions.** Licensee shall not, and shall not permit an Affiliate or any other Person to:

- (a) copy the Software, in whole or in part;
- (b) modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of the Software;
- (c) lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Software available to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (d) reverse engineer, disassemble, decompile, decode or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part;
- (e) bypass or breach any security device or protection used for or contained in the Software or Documentation;
- (f) reproduce, remove, delete, alter, obscure, translate, combine, supplement or otherwise change any trademarks, copyright notices, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Software or the Documentation;

- (g) install the Software on, or configure the Software or Licensee's other systems to make the Software (including its functionality), accessible through, any network that is connected to the public internet, unless the Software was specifically designed (as confirmed in its Documentation) to be accessed by users via the public internet;
- (h) use the Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right of any Person, or that violates any Applicable Law;
- (i) use any element of the Software separately from the Software;
- (j) use the Software for purposes of benchmarking or competitive analysis of the Software;
- (k) use the Software to design, develop, or configure a competing software product or service; or
- (l) use the Software or Documentation other than for the Permitted Use or in any manner or for any purpose or application not expressly permitted by these Terms and Conditions.

2.4 **End Users.** Licensee shall remain liable for use of the Software, Documentation, Maintenance Services and Professional Services by its Affiliates and all Authorized Users. In addition, Licensee's Authorized Users and/or any Affiliate or other end-users that download, access and/or use the Software, Documentation, Maintenance Services and Professional Services ("**End-Users**") shall be subject to the provisions of Licensor's EULA, which will require acceptance from End-Users in the form of a click-wrap in an installer or webpage. If there is a conflict between these Terms and Conditions and the EULA, the more restrictive terms on use of the Software shall control. **LICENSEE SHALL INDEMNIFY LICENSOR AND ITS AFFILIATES FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THE END-USERS' USE OF THE SOFTWARE.**

3. **ORDERING; DELIVERY.**

- 3.1 **Ordering.** Licensor will prepare and submit to Licensee for acceptance Orders for Software and Maintenance Services. No Order will be deemed accepted by Licensee unless and until Licensee either (i) accepts such Order by executing same and returning it to Licensor, or (ii) without executing the Order, downloads or installs the Software.
- 3.2 **Delivery.** Licensor may deliver the Software by making such Software available to Licensee for secure electronic download, or by shipping a copy of such Software to Licensee's designated address, FCA Licensor's site (Incoterms 2010), as reasonably selected by Licensor or as specified in an applicable Order. Shipping and handling charges, where applicable, will be invoiced with shipment.

4. **MAINTENANCE SERVICES.**

- 4.1 **Maintenance Services; Covered Software.** Licensor shall provide Patches, Updates, technical support and/or related support services (collectively, the "**Maintenance Services**") to Licensee in connection with the Software. The specific scope and extent of Maintenance Services to be provided by Licensor, and the fees payable by Licensee therefore, will depend on the Maintenance Services plan that Licensee purchases in connection with the Software identified and described in the applicable Order (the "**Covered Software**"). Licensor may also issue maintenance fact sheets (each, a "**Fact Sheet**") to inform Licensee of additional or modified details regarding its Maintenance Services which are to take effect with respect to any Covered Software at the next Maintenance Service renewal date. At any given time, the then-current Fact Sheet, as same may have been modified from time-to-time and provided to Licensee, shall be considered a part of these Terms and Conditions and/or the applicable Covered Software Order. Any and all Maintenance Services furnished by Licensor with respect to the Covered Software shall be subject to and governed by these Terms and Conditions. For the avoidance of doubt, Licensor shall have no obligation to provide Maintenance Services, by any means, to any party other than Licensee. Licensor will have the right (hereinafter the "**Software Lifecycle Right**") to discontinue providing (or reduce the scope of) Maintenance Services for Covered Software (or specific versions thereof) that it deems to be obsolete or superseded, or that it may otherwise elect to replace or retire. The terms of Licensor's Software Lifecycle Right may be described in the Documentation for the Covered Software, or in a support bulletin or Fact Sheet furnished to Licensee. In no event will Licensor discontinue (or reduce the scope of) the Maintenance Services being provided for any Covered Software without providing Licensee with at least three (3) months advance written notice of the date same will occur. Such notice may be provided by email to the person designated as Licensee's Technical Contact in the Order for the Covered Software. Should Licensor discontinue (or reduce the scope of) the Maintenance Services being provided for any Covered Software prior to the Maintenance Service Renewal date,

Licensor shall refund to Licensee a pro rata portion of the Maintenance Fee paid for the then current Maintenance Service period.

4.2 **Covered Software.** Maintenance Services for the Software are available only if Licensee has purchased a Software license from Licensor or an authorized distributor or reseller through an Order accepted and acknowledged by Licensor, and shall extend only to the Covered Software. If the license expires or is terminated, the Covered Software shall immediately cease to be eligible for Maintenance Services. In no event will any non-Licensor software or other Third Party products be covered by the Maintenance Services.

4.3 **Term of Maintenance Services; Renewal; Termination; Reinstatement.**

(a) **Term.** The term of the Maintenance Services provided for the Covered Software will begin on the date specified in the Order therefore and will continue thereafter for the period specified in the Order (usually twelve (12) months), unless terminated as set forth elsewhere herein. Maintenance Services will automatically renew at the end of the initial Maintenance Services period specified in the Order, at Licensor's then-current Maintenance Services pricing (or as otherwise agreed in the applicable Order). In the event the license term for the Covered Software is based on a subscription or fixed term (rather than a perpetual) license, the Maintenance Service fee may be included as part of such subscription or term license, as specified in the Order for the Covered Software.

(b) **Non-Renewal.** Licensee may terminate the Maintenance Services at the end of any Maintenance Service period by providing Licensor written notice of non-renewal thirty (30) days in advance of automatic renewal.

(c) **Assignment and Transfer.** Notwithstanding anything contained in these Terms and Conditions to the contrary, Licensee may not transfer or assign its rights to receive Maintenance Services with respect to any Covered Software to a Third Party without the prior written consent of Licensor, which consent may be conditioned upon Licensee's and the Third Party's compliance with the provisions of Article 18.

(d) **Termination for Cause.** In the event Licensee fails to timely pay the Maintenance Services Fees specified in the Order for the Covered Software, or is otherwise in breach of any of these Terms or Conditions or the Order applicable to the Covered Software, Licensor may suspend Maintenance Services. If such non-compliance has not been cured by Licensee within thirty (30) days of Licensee's receipt of written notice thereof, Licensor may terminate Maintenance Services for the Covered Software for cause, without any refund obligation or other liability to Licensee, and without waiving any other Licensee payment obligations hereunder or under any Order or Statement of Work.

(e) **Reinstatement.** Requests for reinstatement of terminated Maintenance Services will be subject to Licensor's approval, in its sole discretion. Any reinstatement shall be subject to Licensee's payment of: (i) Licensor's then current Professional Service rates for any reinstallation of the Software (and/or the installation of any Patches or Updates); (ii) a reinstatement fee equal to twenty-five percent (25%) of the Maintenance Fees for the applicable calendar year; and (iii) all Maintenance Fees for the period(s) during which Maintenance Services were in an unpaid, suspended, or terminated status.

4.4 **Exclusions from Maintenance Services.** Unless otherwise expressly stated in an applicable Order or Fact Sheet with regard to Maintenance Services, Maintenance Services do **not** include, and in no event will Licensor be obligated to provide or perform, any of the following:

(a) support, assistance, or other services for correction of (i) errors caused by Licensee, including Licensee's installation, configuration, modification, or use of the Covered Software in a manner inconsistent with the applicable Documentation, or (ii) errors resulting from causes unrelated to the Covered Software itself, including errors or failures in Third Party hardware or software, computer viruses, power failures or surges, or acts of God;

(b) diagnosis or correction of any Third Party software, network, operating system, or hardware problems or issues;

(c) on-site services or non-business-hours support;

(d) support, assistance, or other services related to custom software components provided to Licensee, but not made part of Licensor's standard Covered Software;

- (e) development of custom scripts, screens, reports or other interfaces to the Covered Software;
- (f) installation, conversion, Upgrade or routine operation of Covered Software;
- (g) integration of Covered Software with other software products; or
- (h) training, hosting and/or professional/consulting services pertaining to the Covered Software.

4.5 **Licensee Cooperation; System Access.** Licensee acknowledges that Licensor's ability and obligation to provide Maintenance Services are conditioned upon receiving reasonable cooperation from Licensee through Licensee designated technical point(s) of contact and other personnel involved in requesting and receiving Maintenance Services. Licensee further acknowledges that Licensor's ability to provide Maintenance Services with respect to the Covered Software will require that Licensor (and any Licensor vendor or consultant furnishing support for the Covered Software) have timely access to the Licensee network, system or cloud on which the Covered Software is installed. Subject to the confidentiality provisions in **Section 6.1** below, Licensee hereby grants Licensor (and its vendors and consultants supporting the Covered Software) permission to access Licensee's network, system or cloud for the purpose of performing Maintenance Services.

5. **PROFESSIONAL SERVICES**

5.1 **Professional Services.** At Licensee's request, Licensor will provide software deployment, installation, configuration, customization, and/or other related services (collectively, the "**Professional Services**") in connection with the Covered Software which are not included in the Maintenance Services. Any and all Professional Services performed by Licensor shall be subject to and governed by these Terms and Conditions and the applicable Statement of Work (including any Statement of Work which forms a part of or is appended to an Order). Licensor does not guarantee the results of the Professional Services it performs or represent that those Professional Services will achieve Licensee's intended objectives, but does warrant to Licensee that all Professional Services rendered by Licensor will be performed in a good and workmanlike manner, by qualified, trained (and, if required, certified) personnel, in accordance with the requirements of the applicable Statement of Work and any applicable industry standards. Licensor shall, at its sole cost and expense, reperform any Professional Services (or portion thereof) not conforming to the warranties specified above ("**Nonconforming Services**"); *provided* Licensee has notified Licensor of the non-conformity within thirty (30) days of the date of the completion of the Professional Services with respect to which the warranty claim is made. **The foregoing remedies of reperformance of Nonconforming Services shall be the sole and exclusive obligations and responsibilities of Licensor (and the sole and exclusive remedies of Licensee) with respect to Nonconforming Services.**

5.2 **Changes to Statement of Work.** Licensee may submit to Licensor written requests to change the scope of the Professional Services described in a Statement of Work (each such request, a "**Change Request**"). Licensor will continue to perform Professional Services pursuant to the existing Statement of Work and will have no obligation to perform any Change Request unless and until the Parties have agreed in writing to such Change Request and any applicable adjustment to the costs, fees and/or schedule for performance of the Professional Services.

5.3 Invoicing and Payment for Professional Services.

- (a) Unless otherwise provided in the applicable Statement of Work or Change Request, Licenser will invoice Licensee monthly for all Professional Services performed during the prior month. Licensee shall pay the fees and other amounts stated on each invoice submitted by Licenser net thirty (30) days of the invoice date. All Licenser invoices shall include supporting documentation for all reimbursable costs included therein. Invoices not paid in a timely manner will bear interest at the lesser of (i) one percent (1%) per month, or (ii) the highest rate allowed by Applicable Law until paid in full. In the event Licensee fails to pay any undisputed amounts within sixty (60) days of the invoice date, Licenser shall be entitled, at its option, to (i) require payment in advance for Professional Services yet to be performed under any Statement of Work or Change Request, (ii) reduce Licensee's payment terms under any Statement of Work or Change Request to net ten (10) days of the invoice date, (iii) revoke any discounts available with respect to Professional Services performed or to be performed under any Statement of Work or Change Request (including discounts granted with respect to Professional Services covered by any outstanding invoice), and/or (iv) immediately suspend its performance of Professional Services under any Statement of Work or Change Request, or terminate any Statement of Work or Change Request, without penalty or liability, and Licensee shall Indemnify Licenser Group from and against any and all Claims resulting from or arising out of such suspension or termination.
- (b) In the event that Licensee disputes an invoice or part thereof, it may withhold payment of the disputed amount(s), but shall nonetheless timely pay all undisputed amounts and promptly notify Licenser of the disputed amounts or items, specifying the invoice date and number, the amount of the disputed items or charges, and the Professional Services involved. The Parties shall work in good faith to promptly resolve disputed amounts. Invoices not disputed by Licensee within thirty (30) days of the invoice date shall be deemed accurate and Licensee shall not thereafter be entitled to dispute any amount(s) reflected thereon.

5.4 Licensee Responsibilities. In connection with each Statement of Work, Licensee will:

- (a) provide qualified personnel who are capable of performing Licensee's tasks and responsibilities under the Statement of Work;
- (b) provide Licenser with access to Licensee's sites and facilities (subject to Licensee's reasonable security policies) during Licensee's normal business hours and as otherwise reasonably required by Licenser to perform the Professional Services;
- (c) provide Licenser (and its vendors and consultants supporting the Covered Software) permission to access Licensee's network, system or cloud for the purpose of performing the Professional Services;
- (d) provide Licenser (and its vendors and consultants supporting the Covered Software) with such working space and office support as Licenser may reasonably request;
- (e) timely perform Licensee's tasks and responsibilities under the Statement of Work, and such other duties and tasks as may be reasonably required to permit Licenser to perform the Professional Services; and
- (f) make available to Licenser any data, information and any other materials requested by Licenser to perform the Professional Services, including, but not limited to, any data, information or materials specifically identified in the Statement of Work (collectively, "**Licensee Materials**"). Licensee will be responsible for ensuring that all such Licensee Materials are accurate and complete.

5.5 Designated Contacts. Each Party will designate in each Statement of Work the individual(s) who will be the primary point(s) of contact for matters relating to the Professional Services. A Party may designate replacement contacts upon prior written notice to the other Party.

5.6 Ownership of Work Product. Subject to Licensee's rights in the Licensee Materials or as otherwise specified in the Statement of Work, Licenser shall own all rights, title and interest in and to any work product, Software Enhancements (as hereinafter defined), software programs or tools, interfaces, utilities, technology, devices, specifications, documentation, ideas, concepts, know-how, processes, methodologies, techniques and materials of any kind used or developed by Licenser or its personnel in connection with its performance of the Professional Services (collectively "**Licenser Work Product**") and all Intellectual Property Rights therein.

- 5.7 **Licensee Rights.** If and to the extent Licensor Work Product includes any Software Enhancements or extensions to the Software (including any interfaces between such Software and other systems, and any code or materials generated as part of Licensor's installation or configuration of the Software), all such Software Enhancements or extensions will be deemed licensed to Licensee on the same basis as the Software to which they relate, subject to and in accordance with these Terms and Conditions. Licensee will have no other rights in the Licensor Work Product, except as expressly agreed to in writing by the Parties. Nothing in these Terms and Conditions will be construed as restricting or limiting Licensor's right to use, license to any Third Party, or otherwise exploit any Licensor Work Product; to perform similar services for any Third Party; or to assign any employees or subcontractors to perform for any Third Party services which are similar to the Professional Services it provides to Licensee.

6. CONFIDENTIALITY; NON-SOLICITATION.

- 6.1 **Confidential Information.** Each Party receiving Confidential Information (the "**Receiving Party**") warrants and agrees that for a period of five (5) years after its receipt thereof, it shall maintain and safeguard the confidentiality of all Confidential Information received by it from the other Party (the "**Disclosing Party**"), handling and treating same with at least the same degree of care (and affording it the same protections) the Receiving Party observes and provides for its own confidential, proprietary and trade secret information, and in all events with at least a reasonable standard of care. For purposes of these Terms and Conditions, the term "**Confidential Information**" shall mean and include (i) with respect to Licensor, any confidential, non-public information that describes, pertains or relates to the Software (including object code, source code and other proprietary know-how relating to the Software), the Maintenance Services, or the Professional Services (or to the methods, processes, procedures, or technologies employed by Licensor in performing same) and (ii) with respect to Licensee, any confidential, non-public data or information with respect to the Covered Assets, if (and to the extent) such information could be used by a Third Party to specifically identify any Covered Asset (by location or otherwise) or Licensee as the owner or operator thereof. For the avoidance of doubt, data or information with respect to the Covered Assets which does not (or has been aggregated or anonymized by Licensor so that it does not, and cannot be used to) specifically identify any Covered Asset or Licensee as the owner or operator thereof shall **not** be considered Licensee Confidential Information and Licensor shall be free to use such information (i) in external brochures, white papers, and other publications, (ii) to market, promote, modify, improve or enhance the Software (including the development of New Releases, Upgrades, Updates or Patches) or the Documentation or (iii) to develop new Software.
- 6.2 **Limitations.** Confidential Information does not include information which: (a) is or becomes generally available in the public domain through no wrongful act of the Receiving Party or any Receiving Party Representative; (b) was lawfully in the Receiving Party's possession prior to being provided to the Receiving Party (including data or information Licensor is required to retain pursuant to Applicable Law); (c) is independently made available to the Receiving Party by a Third Party under no obligations to maintain the secrecy thereof; or (d) was independently developed by Receiving Party without access to or knowledge of the Disclosing Party's Confidential Information.
- 6.3 **Remedy.** If a Receiving Party is required to disclose all or any part of the Disclosing Party's Confidential Information under the terms of a valid subpoena, decree or order issued by a court or tribunal of competent jurisdiction, or by a governmental body pursuant to Applicable Law or regulation, the Parties agree promptly to notify the other Party, in writing, of the existence, terms and circumstances surrounding the request or order and reasonably assist the Disclosing Party in seeking an appropriate protective order at Disclosing Party's election. If, in the written opinion of a Party's legal counsel, disclosure of Confidential Information of the other Party is required in order to avoid sanction or penalty, said counsel shall exercise reasonable efforts, with the cooperation of the other Party if necessary, to obtain an order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information of the other Party.
- 6.4 **Publicity.** Except as set forth in section 6.1 above, neither Party will issue any press release or other public announcement concerning the relationship created by these Terms and Conditions, or make any reference to the other Party or its products or services in any advertising or marketing materials, without the other Party's prior written approval.
- 6.5 **Injunctive Relief.** Given the nature of the Confidential Information and the competitive damage that would result to Disclosing Party upon unauthorized disclosure or use of its Confidential Information, Receiving Party agrees that monetary damages would not be a sufficient remedy for a breach of this this Section 6 and therefore, in addition to and not in lieu of any other rights or remedies, Disclosing Party may seek specific performance and injunctive and other equitable relief as a remedy for any breach or threatened breach of this Section 6 without the necessity of proving actual monetary damages in connection therewith.

6.6 **Non-solicitation.** Licensee covenants, warrants and agrees that for a period of twelve (12) months after its receipt of the Professional Services described in these Terms and Conditions, it shall not, directly or indirectly, either for its own benefit or for the benefit of any other Person:

- (a) hire, attempt to hire, contact, or solicit with respect to hiring any employee of Licensor; or
- (b) induce or otherwise counsel, advise or encourage any employee, consultant or contractor of Licensor to leave the employment of or engagement by Licensor.

Licensee shall not be in breach of the prohibitions on the solicitation or hiring of Licensor's employees in subsection (a) above if an employee of Licensor responds to (and/or is hired pursuant to) a public advertisement or job posting or a general recruitment campaign not specifically targeted at Licensor's employees.

7. FEES; TAXES AND DUTIES; PAYMENT.

7.1 **License Fees.** In consideration of the rights granted to Licensee under these Terms and Conditions with respect to its use of the Covered Software, Licensee shall pay to Licensor the license fees (the "**License Fees**") set forth in the Order therefore. Unless otherwise stated in the Order, such License Fees shall be due and payable upon the earlier of delivery or installation of the Covered Software.

7.2 **Maintenance Service Fees.** The fees for Maintenance Services (the "**Maintenance Fees**") with respect to Covered Software shall be as stated in the applicable Order or renewal statement issued by Licensor. In the event of material changes to the Covered Software or Licensee's Licensed Users, Licensor reserves the right, with thirty (30) days written notice to Licensee, to adjust the Maintenance Fees. Maintenance Fees must be paid in full in order to receive any Maintenance Services in a given Maintenance Services period. Renewal of Maintenance Fees will be invoiced in advance and are due not later than the first business day of each maintenance renewal year, or as may be specified in Maintenance Service renewal for the Covered Software. Given the nature of the Covered Software, Licensee acknowledges that Maintenance Services cannot be selectively purchased or renewed on a license-by-license basis. That is, in order to receive Maintenance Services with respect to a particular license, Licensee must be current in its payment of Maintenance Fees for 100% of the Covered Software licenses Licensee have purchased.

7.3 **Taxes and Duties.** All fees and other amounts payable by Licensee under these Terms and Conditions are exclusive of applicable Taxes and Duties (as defined below) and similar assessments. Licensee is responsible for the payment of all Taxes and Duties. For purposes of this provision, "Taxes and Duties" shall mean all fees or charges imposed, assessed or levied by any governmental department, agency, or taxing authority and shall include property taxes, sales and use taxes, value added taxes, goods and services taxes, gross receipts taxes, excise taxes, well services taxes, and/or other charges of a similar nature, customs or other duties and other such charges and fees. Notwithstanding the foregoing, Licensor and Licensee are responsible for all taxes legally imposed upon their respective businesses, including taxes imposed upon their respective income, personnel or property. Such taxes are for Licensor's or Licensee's account, as applicable, and each Party shall Indemnify the other from any liability with respect thereto.

7.4 **Payment.** All License Fees, Maintenance Fees, Professional Services fees, or other amounts due Licensor under these Terms and Conditions, an Order, or any Statement of Work shall be paid in US dollars to the address set forth herein or in the applicable Order or Statement of Work, or to such other address or account as Licensor may specify in writing from time to time.

7.5 **Late Payment.** If Licensee fails to make any payment when due then, in addition to all other remedies that may be available to Licensor:

- (a) Licensor may charge interest on the past due amount at the rate of one and a half percent (1.5%) per month, calculated daily and compounded monthly or, if lower, the highest rate permitted under Applicable Law;
- (b) Licensee shall reimburse Licensor for all reasonable costs incurred by Licensor in collecting any late payment of amounts due or related interest, including reasonable attorneys' fees, court costs and collection agency fees; and/or

- (c) Licensor may: (i) disable Licensee's use of the Covered Software (including by means of a disabling code, technology or device); (ii) suspend the performance of Maintenance Services of Professional Services; and/or (iii) suspend or revoke Licensee's rights to use any Covered Software.

7.6 **No Deductions or Setoffs.** All amounts payable to Licensor shall be paid by Licensee to Licensor in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by Applicable Law).

8. SECURITY MEASURES.

8.1 **Software Security Measures.** The Software may contain technological measures designed to prevent unauthorized or illegal use of the Software. Licensee acknowledges and agrees that:

- (a) Licensor may use these and other lawful measures to verify Licensee's compliance with these Terms and Conditions and enforce Licensor's rights, including all Intellectual Property Rights, in and to the Software;
- (b) Licensor may deny any individual access to the Software if Licensor, in its sole discretion, believes that person's use of the Software would violate any provision of these Terms and Conditions, regardless of whether Licensee designated that person as an Authorized User; and
- (c) Licensor and its nominee may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Licensee's computers, systems and software, that Licensor may gather periodically to improve the performance of the Software or develop Patches.

8.2 **Licensee Security Measures.** Licensee shall maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality and integrity of the Software and avoid the unauthorized access to, disclosure, use, destruction, loss or alteration of the Software (collectively, the "Data Safeguards"). Licensee further agrees that it will monitor and test its Data Safeguards from time to time and adjust them in light of the results of any relevant testing or monitoring.

9. AUDIT.

9.1 **Audit Procedure.** Licensor or its nominee (including its accountants and auditors) may inspect and audit Licensee's use of the Software under these Terms and Conditions. All such audits shall be conducted during regular business hours and in a manner that does not unreasonably interfere with Licensee's business operations. Licensee shall make available all such books, records, equipment, information and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Licensor with respect to such audit. Licensor shall only examine information directly related to Licensee's use of the Software.

9.2 **Cost and Results of Audit.** If the audit determines that Licensee's use of the Software exceeded the usage permitted by these Terms and Conditions, Licensee shall pay to Licensor all amounts due for such excess use of the Software based on prices in effect at the conclusion of such audit, plus interest on such amounts and any reasonable costs incurred by Licensor in conducting the audit, within thirty (30) days of the date of written notification of the audit results.

10. INTELLECTUAL PROPERTY; SOFTWARE ENHANCEMENTS.

10.1 **Intellectual Property Management and Ownership.** Licensee acknowledges and agrees that:

- (a) The filing, prosecution, defense and maintenance of Intellectual Property Rights related to the Software, Software Enhancements (as defined below) and Documentation shall be at the sole discretion of Licensor, without obligation to account to Licensee;
- (b) the Software and Documentation are licensed, not sold, to Licensee by Licensor and Licensee does not and will not have or acquire under or in connection with these Terms and Conditions any ownership interest in the Software or Documentation, or in any related Intellectual Property Rights;

- (c) Licensor (and its licensors, if applicable) remains the sole and exclusive owner of all right, title and interest in and to the Software and Documentation (and any feedback to or use thereto), including all Intellectual Property Rights relating thereto; and
- (d) Licensee hereby unconditionally and irrevocably assigns to Licensor, its entire right, title and interest in and to any Intellectual Property Rights that Licensee may now or hereafter have in or relating to the Software or Documentation (including any rights in derivative works or patent improvements relating to either of them), whether held or acquired by operation of law, contract, assignment or otherwise.

10.2 Licensee Cooperation and Notice of Infringement. Licensee shall:

- (a) take all reasonable measures to safeguard the Software and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access;
- (b) at Licensor's expense, take such steps as Licensor may reasonably require to assist Licensor in maintaining the validity, enforceability and Licensor's ownership of the Intellectual Property Rights in the Software and Documentation;
- (c) promptly notify Licensor, in writing, if Licensee becomes aware of: (i) any actual or suspected infringement, misappropriation or other violation of Licensor's Intellectual Property Rights in or relating to the Software or Documentation; or (ii) any claim that the Software or Documentation, including any production, use, marketing, sale or other disposition of the Software or Documentation, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any Person; and
- (d) at Licensor's expense, fully cooperate with and assist Licensor in all reasonable ways in the handling of any Claim by Licensor to prevent or abate any actual or threatened infringement, misappropriation or violation of Licensor's rights in, and to attempt to resolve any Claims relating to, the Software or Documentation, including having Licensee's employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens and the like.

10.3 No Implied Rights. Except for the limited rights and licenses expressly granted under these Terms and Conditions, nothing herein grants, by implication, waiver, estoppel or otherwise, to Licensee or any Third Party any Intellectual Property Rights or other right, title, or interest in or to any of the Software or Documentation.

10.4 Software Enhancements. If Licensee, on its own or jointly with others (including Licensor), makes or conceives of any developments, improvements, enhancements or derivations of or with respect to or for any Covered Software, whether patentable, copyrightable or not, including any of the foregoing arising out of, based upon, or in connection with, Licensee's use of the Covered Software or any new, additional or modified Covered Software features or functionality requested by Licensee (including any Intellectual Property Rights, object code, source code, and other know-how relating thereto) (collectively "**Software Enhancements**"), such Software Enhancements shall belong solely to Licensor, regardless of inventorship or authorship, and Licensee agrees to: (i) promptly and fully disclose in writing to Licensor the existence and nature of all Software Enhancements; (ii) keep accurate, and complete records of Licensee's activities relating to the Software Enhancements; and (iii) promptly deliver to Licensor any written assignment, acknowledgement, or other instrument(s) (and perform any other acts) necessary, in Licensor's reasonable opinion and at Licensor's expense, to assign to Licensor (and perfect Licensor's rights, title and interests in and to) such Software Enhancements and all Intellectual Property Rights relating thereto. Notwithstanding the foregoing, the term "Software Enhancement" shall **not** include any Licensee Confidential Information which is merged into or with the Software, whether by Licensee or Licensor, and Licensor shall have no right or license to or any interest in such Licensee Confidential Information.

11. REPRESENTATIONS AND WARRANTIES.

11.1 Mutual Representations and Warranties. Each Party represents, warrants and covenants to the other Party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Applicable Laws of the jurisdiction of its incorporation or other organization;

- (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants and is required to grant under these Terms and Conditions and/or any Order;
- (c) the acceptance of these Terms and Conditions and/or any Order by its representative has been duly authorized by all necessary corporate or organizational action of such Party; and
- (d) when accepted, these Terms and Conditions and/or any Order will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

11.2 **Limited Software Warranty.** Subject to the conditions and exceptions set forth in Sections 12.3 and 12.4 below, Licensor warrants to Licensee that for a period of thirty (30) days following the earlier of (i) the date the Covered Software is downloaded by Licensee, or (ii) installed on Licensor's computer network system or designated cloud system (whether by Licensee or Licensor) (the "**Warranty Period**") the Covered Software will function and perform in all material respects as described in the Documentation furnished therewith, when installed, operated and used as provided in the Documentation and in accordance with the requirements of these Terms and Conditions.

Limited Hardware Warranty. Licensee acknowledges that certain hardware may be provided in connection with the Software. Such hardware will be secured by Licensor from Third Parties ("**Third-Party Hardware**"). With respect to Third-Party Hardware, Licensor warrants that same shall be new (unless otherwise specified in the Order), but makes no other representations or warranties whatsoever with respect thereto, hereby disclaiming any and all other warranties, express or implied. Licensor shall pass through to Licensee any Third-Party Hardware warranties provided by the Third Party Hardware's manufacturer, to the extent same are transferable, and shall provide Licensee reasonable assistance in the pursuit and enforcement of all warranty claims with respect to Third-Party Hardware.

11.3 **Licensee Requirements.** The limited warranties set forth in Section 12.2 apply only if Licensee: (a) notifies Licensor in writing of the breach of warranty before the expiration of the Warranty Period; (b) has promptly installed all Patches to the Software that Licensor previously made available to Licensee; and (c) as of the date of notification, is in compliance with all terms and conditions of this Agreement and the Order applicable to the Software (including the payment of all license fees then due and owing).

11.4 **Exceptions.** Notwithstanding any provisions to the contrary in these Terms and Conditions, the limited warranty set forth in Section 12.2 shall not apply to the failure of the Covered Software to function and operate as described in the Documentation with respect thereto, or any other problem arising out of or relating to:

- (a) Covered Software (or the media on which it is provided) that has been modified or damaged by Licensee or a Third Party;
- (b) use of the Covered Software contrary to or in conflict with its Documentation, including any incorporation, integration or combination into or with the Software of any other technology (including any software, hardware, firmware, system or network) not approved in the Documentation;
- (c) Licensee's failure to promptly install all Patches that Licensor has previously made available to Licensee;
- (d) the operation of, or access to, Licensee's or a Third Party's system or network (including any Third Party cloud); or
- (e) any other circumstances or causes outside of the reasonable control of Licensor (such as abnormal physical or electrical stress to the system or network on which the Covered Software is installed).

11.5 **Remedial Efforts.** If Licensor breaches, or is alleged to have breached, the limited warranty set forth in Section 12.2, Licensor may, at its option and expense and subject to these Terms and Conditions, take any of the following steps to remedy such breach:

- (a) replace any damaged or defective media on which the Covered Software was provided to Licensee;
- (b) amend, supplement or replace any incomplete or inaccurate Documentation;
- (c) repair the Covered Software;

- (d) replace the Covered Software with functionally equivalent software (which software will, on its replacement of the Covered Software, constitute Software hereunder); and/or
- (e) terminate the Order for the Covered Software (provided that Licensor has first attempted to remedy the breach as set forth above).

11.6 **Licensee's Remedy.** If Licensor does not cure a warranty breach within a reasonable period of time after Licensor's receipt of written notice of such breach (or Licensor terminates the applicable Software Order as provided in Section 12.5 (e) above), Licensee shall have the right to receive a refund of (i) fifty percent (50%) of the License Fees paid by Licensee for the non-conforming Software and (ii) a *pro rata* portion of the Maintenance Fees paid for the then current Maintenance Service period. THIS SECTION SETS FORTH THE LICENSEE'S SOLE REMEDY AND THE LICENSOR'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF ANY LICENSOR'S WARRANTIES WITH RESPECT TO THE SOFTWARE.

11.7 **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS, ALL SOFTWARE, DOCUMENTATION, MAINTENANCE SERVICES, PROFESSIONAL SERVICES AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY LICENSOR ARE PROVIDED "AS IS." LICENSOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE. WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, DOCUMENTATION, MAINTENANCE SERVICES, PROFESSIONAL SERVICES, OR ANY OTHER GOODS, SERVICES, TECHNOLOGIES OR MATERIALS FURNISHED BY LICENSOR WILL MEET LICENSEE'S OR ANY OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY GOODS, SERVICES, TECHNOLOGIES OR MATERIALS OF THIRD PARTIES (INCLUDING ANY SOFTWARE, HARDWARE, SYSTEM OR NETWORK), OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL OR MALICIOUS CODE OR ERROR FREE.

12. **INDEMNITIES.**

12.1 **Intellectual Property Infringement Indemnity.** If a Third Party claims that the original, unaltered, unmodified Software or Documentation provided by Licensor infringes any U.S. patent, copyright, trade secret or other intellectual property right (an "Infringement Claim"), Licensor will (as long as Licensee is not in material default under these Terms and Conditions) Indemnify Licensee against such Infringement Claim at Licensor's sole cost and expense and pay all damages finally awarded by a court of competent jurisdiction in connection with the Infringement Claim, *provided* that Licensee (i) promptly notifies Licensor in writing of the Infringement Claim, (ii) allows Licensor to control the defense or any related settlement negotiations, and (iii) cooperates with Licensor in the defense of the Infringement Claim. However, the foregoing Indemnity obligation does not apply to the extent that such Infringement Claim arises from any allegation of or relating to any:

- (a) operation or use of the Software contrary to or in conflict with the Documentation, including any incorporation, integration or combination into or with the Software of any other technology (including any software, hardware, firmware, system or network) not recommended or approved in the Documentation;
- (b) modification of the Software other than: (i) by Licensor; or (ii) with Licensor's express written authorization and in strict accordance with Licensor's written directions and specifications;
- (c) failure to timely implement any Patch, modification, update or replacement of the Software made available to Licensee by Licensor;
- (d) use of the Software after Licensor's notice to Licensee of such alleged or actual infringement, misappropriation or other violation of a Third Party's rights;
- (e) abuse, misapplication or misuse of the Software or Documentation by or on behalf of Licensee, Licensee's Representatives or a Third Party;
- (f) use of the Software or Documentation by or on behalf of Licensee that is outside the purpose, scope or manner of use authorized by these Terms and Conditions or in any manner contrary to Licensor's written instructions; or

- (g) events or circumstances outside of Licensor's reasonable control (including any Third Party hardware, software or system bugs, defects or malfunctions).

12.2 **Mitigation.** If the Software, or any part of the Software, is, or in Licensor's opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any Third Party Intellectual Property Right, or if Licensee's use of the Software is enjoined or threatened to be enjoined, Licensor may, at its option and sole cost and expense:

- (a) obtain from the Third Party the right for Licensee to continue to use the Software materially as contemplated by these Terms and Conditions;
- (b) modify or replace the Software, in whole or in part, to make the Software non-infringing, while providing materially equivalent features and functionality (and such modified or replacement software will constitute Software under these Terms and Conditions); or
- (c) if, after Licensor's exercise of commercially reasonable efforts, none of the remedies set forth above are reasonably available to Licensor, terminate the applicable Order, in its entirety or with respect to the affected part or feature of the Software, effective immediately on written notice to Licensee, in which event: (i) Licensee shall cease all use of the Software and Documentation immediately on receipt of Licensee's notice; and (ii) Licensor shall promptly refund to Licensee, on a *pro rata* basis, the License Fees and any prepaid Maintenance Fees paid by Licensee with respect to the effected Software.

12.3 **Sole Remedy for Infringement Claims.** THE FOREGOING SECTIONS OF THIS ARTICLE 13 SET FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITIES AND OBLIGATIONS WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT CLAIM.

12.4 **LICENSEE INDEMNITY.** LICENSEE AGREES TO INDEMNIFY LICENSOR AND ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, CONSULTANTS, VENDORS, AGENTS, REPRESENTATIVES, LICENSEES, SUCCESSORS AND/OR ASSIGNS (COLLECTIVELY "LICENSOR GROUP") FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF, RESULTING FROM, OR RELATING TO LICENSEE'S USE OF THE SOFTWARE, THE DOCUMENTATION, OR LICENSOR'S PROFESSIONAL SERVICES, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR (A) BODILY INJURY OR DEATH SUFFERED BY LICENSEE, ITS AFFILIATES, AND ITS CLIENTS (INCLUDING ANY OF ITS OR THEIR CO-WORKING, NON-WORKING, OPERATING AND ANY OTHER INTEREST OWNERS), LESSORS AND CO-LESSEES AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS (OF ANY TIER), CONSULTANTS, VENDORS, AGENTS, REPRESENTATIVES, INVITEES, SUCCESSORS AND/OR ASSIGNS ("LICENSEE GROUP"), (B) DAMAGE TO OR LOSS OF PROPERTY SUFFERED BY ANY MEMBER OF LICENSEE GROUP, (C) POLLUTION, ENVIRONMENTAL CONTAMINATION, OR CATASTROPHIC LOSS SUFFERED IN CONNECTION WITH ANY COVERED ASSETS FOR OR IN CONNECTION WITH WHICH LICENSEE USES THE SOFTWARE, AND/OR (D) ANY DECISION MADE BY LICENSEE BASED UPON LICENSEE'S USE OF OR RELIANCE UPON THE SOFTWARE OR LICENSOR'S PROFESSIONAL SERVICES, INCLUDING ANY DRILLING, WELL TREATMENT, PRODUCTION OR OTHER FINANCIAL DECISION MADE BY LICENSEE.

13. LIMITATIONS OF LIABILITY.

13.1 **Waiver of Consequential Damages.** Notwithstanding any provision of these Terms and Conditions to the contrary, except for:

- (a) Licensor claims with respect to fees or compensation due it under any and all Orders or Statements of Work; or
- (b) damages for breaches of a Party's obligations with respect to the other Party's Confidential Information or Intellectual Property Rights, neither Party shall be liable to the other for, and each Party hereby releases the other Party from and against any and all Claims for Consequential Damages (as hereinafter defined). For purposes of the foregoing, the term "Consequential Damages" shall mean and include (i) any and all indirect, incidental, special, punitive, exemplary, or consequential damages or consequential losses of any nature whatsoever (whether or not foreseeable), and (ii) damages or losses, whether direct or indirect, for lost product or production, lost profit or revenue, loss of data, reservoir loss or damage, lost business, loss of or inability to use property and equipment, losses from business interruptions, losses resulting from failure to meet other contractual commitments or deadlines, or losses from downtime of rigs, vessels or facilities.

13.2 **CAP ON MONETARY LIABILITY.** SUBJECT TO THE PROVISION OF THESE TERMS AND CONDITIONS LIMITING LICENSOR'S RESPONSIBILITY FOR BREACH OF WARRANTY CLAIMS, LICENSOR'S MAXIMUM AGGREGATE LIABILITY WITH RESPECT TO

CLAIMS ARISING OUT OF, OR IN ANY WAY RELATING TO, THESE TERMS AND CONDITIONS, LICENSEE'S USE OF THE SOFTWARE OR DOCUMENTATION, OR LICENSOR'S PERFORMANCE OF MAINTENANCE SERVICES OR PROFESSIONAL SERVICES, WHETHER SOUNDING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, STRICT LIABILITY AND BREACH OF STATUTORY DUTY), AT LAW OR IN EQUITY, SHALL BE LIMITED TO THE TOTAL AMOUNTS PAID BY LICENSEE IN THE PRIOR TWELVE (12) MONTHS UNDER THE APPLICABLE ORDER OR STATEMENT OF WORK IN CONNECTION WITH WHICH THE LOSS OR DAMAGE WAS SUSTAINED OR THE CLAIM ASSERTED (THE "LIABILITY CAP"), AND LICENSEE HEREBY RELEASES LICENSOR FROM, AND AGREES TO INDEMNIFY LICENSOR AGAINST, ANY SUCH LIABILITY IN EXCESS OF THE LIABILITY CAP.

14. LAWS AND REGULATIONS.

14.1 Trade Compliance.

- (a) Licensor hereby advises Licensee that Licensor cannot participate in transactions involving any Sanctioned Country (as hereinafter defined) or with any entity known to be organized in, or owned or controlled by a national of, a Sanctioned Country (a "**Restricted Party**"). For purposes of the foregoing, a "**Sanctioned Country**" shall mean and include Cuba, Iran, Sudan, North Korea, Syria, the Crimea Region of Ukraine, or any other country that may be subject in the future to comprehensive bilateral or multilateral economic sanctions applicable to Licensor, including those imposed by the United Nations, the United States and/or the European Union. If in fulfilling any Order or performing any Professional Services Licensor is required to engage in any act for the direct or indirect benefit of any Sanctioned Country or Restricted Party, such requirement shall constitute grounds for Licensor's immediate termination of any Order (or Statement of Work), and Licensor shall not be in breach or default or subject to any liability as a result of such termination.
- (b) Licensee shall not, directly or indirectly, sell, provide access to, export, re-export, transfer, divert, loan, lease, consign, transship, transport, or otherwise dispose of any of Licensor's Software or Documentation to or via: (i) any denied or Restricted Party, as identified on United States, European Commission/EU member state, or similar lists maintained by other governments with jurisdiction over such transactions; (ii) any Sanctioned Country or Restricted Party; or (iii) any Person or destination, or for any activity or end-use restricted by Applicable Laws or regulations (including those applicable to nuclear, missile, chemical, or biological weapons proliferation, military, or money laundering activities) without first obtaining all required Licensor and government authorizations. Licensee agrees to Indemnify Licensor for any and all fines or penalties arising against Licensor from Licensee's import, export, re-export, transfer, diversion, loan, lease, consignment or other disposition of Licensor Items. If applicable, Licensee agrees to complete Licensor's End-user, End-use, End-destination Declaration ("**EUD**") whenever requested by Licensor.

14.2 Ethics, Anticorruption and Antiboycott. Licensor conducts its worldwide operations ethically and in compliance with the anti-corruption laws of the United States, the United Kingdom, and the other nations in which it operates, including adhering to prohibitions against bribery. Notwithstanding anything to the contrary in these Terms and Conditions, neither Party shall be required to take any action prohibited or penalized by, or to refrain from taking any action required under the laws of, any applicable domestic or foreign jurisdiction relating to international boycotts.

14.3 Government Rights. The Software and Documentation are "commercial computer software" and "commercial computer software documentation", respectively, as such terms are used in FAR 12.212. Any use, duplication or disclosure of the Software or the Documentation by or on behalf of the U.S. Government is subject the restrictions set forth in these Terms and Conditions.

15. FORCE MAJEURE. Neither Party shall be considered in breach of these Terms and Conditions (excluding the obligation of Licensee to pay Licensor under these Terms and Conditions, Orders and Statements of Work) if prevented from performing due to an event of Force Majeure. For purposes of these Terms and Conditions, "**Force Majeure**" means any act or event that renders it wholly or partially impossible for the affected Party to perform its obligations under these Terms and Conditions or any Order or Statement of Work or delays such affected Party's ability to do so, when such act or event: (a) is beyond the reasonable control of the affected Party, (b) is not due to the fault or negligence of the affected Party, and (c) could not have been avoided by the affected Party by the exercise of reasonable diligence. If any period of Force Majeure preventing performance under the Terms and Conditions continues for more than thirty (30) days, either Party may terminate the effected Order by giving five (5) days written notice to the other Party. Licensor shall be paid for all work provided and/or performed to the date of termination and any other reasonable costs incurred as a result of such termination. In allocating the risk of delay or failure of performance of their respective obligations under the Terms and Conditions by reason of an

event of Force Majeure, the Parties have not taken into account the possible occurrence of any particular acts or events beyond their control, irrespective of whether such acts or events were foreseeable as of the Effective Date.

16. **RELATIONSHIP OF THE PARTIES.** The relationship between the Parties is that of independent contractors. Nothing contained in these Terms and Conditions shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

17. **ASSIGNMENT; CHANGE OF CONTROL; TRANSFER OF COVERED ASSETS.**

- 17.1 **No Assignment.** Licensee shall have no right to assign or transfer an Order, a Statement of Work, or any rights to use the Software or the Documentation, in whole, or in part, to any Third Party without Licensor's express prior written consent. **ANY ATTEMPT BY LICENSEE TO ASSIGN OR TRANSFER AN ORDER, A STATEMENT OF WORK, OR ANY RIGHTS TO USE THE SOFTWARE OR DOCUMENTATION WITHOUT SUCH CONSENT WILL BE NULL AND VOID, AND ENTITLE LICENSOR TO EXERCISE ANY AND ALL REMEDIES AVAILABLE TO LICENSOR UNDER THESE TERMS AND CONDITIONS.** These Terms and Conditions shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

17.2 **Effect of a Change of Control or Transfer of Covered Assets.**

- (a) If Licensee undergoes a Change of Control or a Transfer of Covered Assets (as both terms are hereinafter defined), Licensee shall promptly notify Licensor thereof, in writing. Licensee will be deemed to have undergone a **"Change of Control"** if: (a) Licensee or Affiliates of Licensee owning or Controlling all or substantially all of the Covered Assets are acquired in a transaction in which a Person that was not an Affiliate of Licensee prior to said transaction Controls Licensee or said Affiliates upon completion of the transaction and will continue using Covered Software for the benefit of the Covered Assets following closing of the transaction; or (b) all or substantially all of the Covered Assets are "spun-off" to form or create a new public or private entity not Controlled by Licensee or an Affiliate of Licensee and that new public or private entity will continue using Covered Software for the benefit of the Covered Assets following the closing of the transaction. Licensee will be deemed to have undergone a **"Transfer of Covered Assets"** if there has not been a Change of Control and (a) Licensee or an Affiliate transfers Covered Assets to a Third Party, and that Third Party will continue to use the Covered Software for the benefit of the Covered Assets following closing of the transaction; or (b) an Affiliate of Licensee which owns or operates Covered Assets is acquired by a Third Party in a transaction and the acquiring Third Party will continue to use the Covered Software following closing of the transaction.
- (b) No Third Party gaining Control of Licensee as a result of a Change of Control or obtaining or acquiring Covered Assets as part of a Transfer of Covered Assets or the acquisition of a Licensee Affiliate which owns or operates Covered Assets (each a **"Transferee"**) shall have any rights in or under Order following or pursuant to a Change of Control or Transfer of Covered Assets unless, within thirty (30) days of the Change of Control or Transfer of Covered Assets, Licensor has been paid (i) a transfer fee equal to 100% of the list price of each Software license being transferred or assigned that was in effect on the date Licensor is notified of a Change of Control or Transfer of Covered Assets, and (ii) any associated unpaid Maintenance Service fees in effect with respect to such Software at the time of such Change of Control or Transfer of Covered Assets (collectively the **"Transfer Fee"**). For the avoidance of doubt, the rights and interest of Licensee hereunder shall inure to the benefit of the Transferee following a Change of Control or Transfer of Covered Assets (and the duties, obligations and responsibilities of Licensee hereunder shall be and become fully binding upon such Transferee) if and when, and only if and when, Licensor has received written notice of the Change of Control or Transfer of Covered Assets and the applicable Transfer Fee. If Licensor has not received the Transfer Fee within thirty (30) days of the effective date of a Change of Control, Licensor may (a) disable the Licensee's and the Transferee's use of the Software, with no liability whatsoever (including by means of a disabling code, technology or device); (b) withhold, suspend or revoke its grant of a license to use the Software and Documentation; (c) suspend the performance of Maintenance Services hereunder. If Licensor has not received the Transfer Fee within thirty (30) days of the effective date of a Transfer of Covered Assets, then the Transferee shall have no right to use the Software and Licensor may take such actions and seek any damages against Transferee available to it at law or in equity to prevent the use of the Software by the Transferee.
- (c) Licensee may continue to use the Software for the benefit of the Transferee in the event of a Transfer of Covered Assets for a period no longer than thirty (30) days following the effective date of the Transfer of Covered Assets (the **"Transition Period"**). Licensee shall continue to be responsible for all License fees and Maintenance Services fees due or becoming

due during the Transition Period. Following the Transition Period, the Transferee must obtain separate licenses and rights from Licensor if it intends to continue to use the Software. In the case of a Transfer of Covered Assets, the Transfer Fee shall be credited against the Software license fees payable by the Transferee under the terms of such new Software license.

18. REGISTRATION OF LICENSES. Licensee agrees to register and give required notice concerning these Terms and Conditions, at its expense, in each country where an obligation exists under Applicable Law to so register or give notice.

19. NOTICES. All notices, notifications, requests, consents, directions, instructions, and other communications required or permitted to be given under these Terms and Conditions ("**Notices**") shall be in writing and shall be deemed to have been duly given if delivered: (a) in person, by courier or by overnight delivery service, with independent proof of delivery, or (b) via confirmed email as indicated below. Unless otherwise specified herein (such as Notices to be delivered to a Party's Representative) Notices shall be addressed to the Party at the address set forth below:

If to Licensor, to:

Weatherford U.S., L.P.
2000 St. James Place
Houston, Texas 77056
Attention: Software Director
Email: legal.contracts@weatherford.com

If to Licensee, to:

Attention: _____
Email: _____

or to such other physical or email address(es) and to the attention of such other Person(s) as either Party may designate by Notice given in accordance with the foregoing requirements.

20. GOVERNING LAW; VENUE; JURY WAIVER; ATTORNEYS' FEES.

20.1 Governing Law and Venue. These Terms and Conditions and all Orders and Statements of Work shall be governed, construed and interpreted in accordance with the laws of the State of Texas, without regard to any choice of laws or conflict of laws provisions which would direct the application of the laws of another jurisdiction. Venue for any litigation filed with respect to these Terms and Conditions or any Order or Statement of Work shall be exclusive in the courts, state or federal, sitting in Houston, Harris County, Texas.

20.2 Jury Waiver. TO THE EXTENT ALLOWED BY THE GOVERNING LAW, EACH PARTY HEREBY WAIVES ALL RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY LITIGATION INVOLVING THESE TERMS AND CONDITIONS, ANY ORDER, OR ANY STATEMENT OF WORK. Nothing herein shall prohibit a Party from availing itself of a court of competent jurisdiction for the purpose of injunctive relief.

20.3 Attorneys' Fees. In the event either Party institutes suit to enforce any right or obligation against the other arising from or incidental to these Terms and Conditions, any Order, and/or any Statement of Work, the prevailing Party shall be entitled to recover, in addition to any damages or other relief awarded to it, reasonable attorney's fees, court costs, fees of testifying experts or consultants, and other expenses related thereto.

20.4 Waiver of Sovereign Immunity. IF LICENSEE IS OWNED, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, BY ANY COUNTRY OR SOVEREIGN, OR IS AN AUTHORITY OR AGENCY OF ANY COUNTRY OR SOVEREIGN, THEN LICENSEE HEREBY WAIVES ANY AND ALL RIGHTS AND IMMUNITIES, INCLUDING WITHOUT LIMITATION, ANY IMMUNITIES FROM LAWSUITS, CLAIMS, PREJUDGMENT SEIZURE, ARREST OR ATTACHMENT IT MAY HAVE UNDER THE FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976 (28 USC SECTION 1602, ET SEQ.), AS AMENDED, OR ANY SIMILAR TYPE OF STATUTE, LAW, RULE OR REGULATION OF ANY COUNTRY OR SOVEREIGN.

21. SEVERABILITY. If any term or provision of these Terms and Conditions is found to be inconsistent with or contrary to Applicable Law or public policy, same shall be deemed to be modified to the extent required to comply with Applicable Law or public policy (it being the intention of the Parties to enforce to the fullest extent all of these Terms and Conditions) and as so modified, these Terms and Conditions shall continue in full force and effect. In the event such term or provision cannot be deemed or modified automatically, the Parties shall attempt to reach agreement on a conforming modification to such term or provision. In the event any such term or provision cannot be modified to comply with Applicable Law, then said term or

provision shall be deemed to be deleted from these Terms and Conditions and the remaining terms and conditions shall remain in full force and effect.

- 22. WAIVER OF TERMS.** No waiver by a Party of any of the terms, provisions, or conditions hereof shall be effective unless said waiver shall be in a writing signed by an authorized officer of the Party against whom the waiver is sought to be enforced. The failure of either Party to enforce any term, provision or condition of these Terms and Conditions shall in no manner affect the right to enforce the same at a later time, and the waiver by either Party of any breach of any term, provision or condition hereunder shall not be construed to be a waiver by such Party of any subsequent or succeeding breach of such term, provision or condition or a waiver by such Party of any breach of any other term, provision or condition.
- 23. ACKNOWLEDGEMENT AND ACCEPTANCE.** The Parties acknowledge that there are indemnities and limitations of liability expressed throughout these Terms and Conditions, whether or not so indicated with different typeface or heading. Weatherford may revise and post updates to these Terms and Conditions from time-to-time, and all Orders will be subject to the most recently posted version of these Terms and Conditions. In accepting Work from Weatherford, Customer shall be deemed to have accepted these Terms and Conditions, unless Weatherford and Customer have entered into a separate, written agreement or contract which governs the Work. The parties expressly acknowledge that they have reviewed, and received notice of said indemnities, limitations of liability and all other terms of these Terms and Conditions.

SCHEDULE A

**SAMPLE
SOFTWARE ORDER FORM**

This Software Order ("**Order**") is made and entered into by and between _____ on behalf of itself and its Affiliates ("**Licensor**") and _____ ("**Licensee**") pursuant to that certain Master Software License and Services Terms and Conditions dated _____ ("**Master Terms and Conditions**") and shall be effective as of the Effective Date specified below.

Terms not defined herein shall have the meaning assigned to them in the Master Terms and Conditions.

In the event of a conflict between the terms and conditions of this Order and the Master Terms and Conditions, the Master Terms and Conditions shall govern and control for all purposes.

[SINGLE PRODUCT FORMAT]

LICENSOR:	[Name of Weatherford Affiliate; e.g. CygNet, Inc., Isologica, Inc., Visual Systems, Inc., etc.]		
LICENSEE:	[Exact name of Licensee company and any DBA used by Licensee]		
NAME OF SOFTWARE:	[e.g., CygNet® version 1.0]		
SCOPE OF ACCESS AND/OR DESIGNATED SITE(S):	[e.g., <i>n</i> computers/workstations, wells, sitewide, project specific, etc.]		
EFFECTIVE DATE:	[e.g., date of delivery or installation/acceptance]		
LICENSE TERM:	[e.g., 12 months or perpetual]		
MAINTENANCE TERM*:			
LICENSE FEES**:	List License Fee:		\$ _____.__
	License Discount:		(\$ _____.__)
	Net License Fee:		\$ _____.__
	Annual Maintenance Fee*:		\$ _____.__
	Total Fees:		\$ _____.__

[MULTIPLE PRODUCT FORMAT]

LICENSOR:	[Name of Weatherford Affiliate; e.g. CygNet, Inc., Isologica, Inc., Visual Systems, Inc., etc.]
LICENSEE:	[Exact name of Licensee company and any DBA used by Licensee]
SCOPE OF ACCESS AND/OR DESIGNATED SITE(S):	[e.g., <i>n</i> computers/workstations, wells, sitewide, project specific, etc.]
EFFECTIVE DATE:	[e.g., date of delivery or installation/commencement]
MAINTENANCE TERM*:	

SOFTWARE AND SCOPE OF ACCESS	FORMAT	QUANTITY	LICENSE TERM	LICENSE FEE**
				\$ _____.__
				\$ _____.__
			List License Fees:	\$ _____.__
			License Discount:	(\$ _____.__)
			Net License Fees:	\$ _____.__
			Annual Maintenance Fee*	\$ _____.__
			Total Fees	\$ _____.__

* **NOTES RE MAINTENANCE TERM AND MAINTENANCE FEES:**

** **NOTES RE LICENSE FEES:**

- ☐ The License Fee **INCLUDES** installation of the Software.
- ☐ The License Fee **DOES NOT INCLUDE** installation of the Software. Installation will be performed by:
- ☐ Licensor under the terms of the Statement of Work attached hereto.
- ☐ A third party selected and paid by Licensee.

Licensee's Main Address; Primary Contact	Licensee's Billing Address; Primary Contact
<div>_____ _____ _____ Contact: _____ Phone: _____ Fax: _____ Email: _____</div>	<div>_____ _____ _____ Contact: _____ Phone: _____ Fax: _____ Email: _____</div>
Licensee's Technical Contact	Delivery/ Installation Address
<div>_____ _____ _____ Contact: _____ Phone: _____ Fax: _____ Email: _____</div>	<div>_____ _____ _____ Contact: _____ Phone: _____ Fax: _____ Email: _____</div>

IN WITNESS WHEREOF, the Parties have executed this Order as of the Effective Date. By their signatures below, each of the signatories to this Order represents that he or she has the authority to execute this Order and to bind the Party on whose behalf his or her execution is made.

Licensor:

Licensee:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____