**OEM RECIPROCAL LICENCE AGREEMENT**

This OEM Reciprocal licence Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [YOUR COMPANY NAME]** (the "Licensor"), a company organised and existed under the laws of the [COUNTRY], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [COMPANY NAME]** (the "Licensee"), a company organised and existed under the laws of the [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

This OEM licence Agreement is a "Contract" made pursuant to a Master Agreement of [DATE]. This Agreement, the Master Agreement and Exhibits [SPECIFY] of the Master Agreement will become effective simultaneously, as of the date when this Agreement, the Master Agreement and all such Exhibits of the Master Agreement have been mutually signed and delivered by the parties.

1. **DEFINITIONS**

"Code" means the computer programming code relating to [SPECIFY] and [SPECIFY] software products in the object and/or executable code form (machine-readable) not to include source code.

"Documentation" means the textual materials relating to the Code provided to each other by Licensor and Licensee, including operating instructions, related technical information, and user documentation.

"[SOFTWARE NAME]" means the software products and programmes for [SPECIFY], as listed in Exhibit A including their Code and Documentation, and any other existing or future e-Commerce Products that Licensor determines is appropriate for [SPECIFY], including their Code and Documentation. Exhibit A shall be updated to keep it current with future e-Commerce Products of Licensor for [SPECIFY] and Updates.

"e-Commerce Products" means software products and programmes that are used in the creation, analysis, management and promotion of Internet E-Commerce web sites, storefronts, customer service, business logic, and e-commerce transactions for consumer-to-business and business-to-business solutions across the Internet or Intranets. Software products or programmes that are not competitive with [SOFTWARE NAME] or future releases thereof shall not be deemed to be within the definition of ecommerce products.

"Marks" means Licensor Marks and Licensee Marks. "Licensor Marks" means the trademarks and/or product names of Licensor. "Licensee Marks" means the trademarks and/or product names of Licensee.

"Proprietary Data" means any proprietary "know-how" which a disclosing party discloses to a receiving party relating to the development or use of the disclosing parties design, structure, configuration, programming, and protocol of the disclosing parties software. "Know-how" may include computer programme designs, algorithms, subroutines, system specifications, programming logic, manufacturing techniques, and programme architecture.

"Licensor Software" means any software proprietary to Licensor including [SOFTWARE NAME] programmes or Code. It also refers to any [SOFTWARE NAME] programmes used in conjunction with Licensee Software.

"Licensee Software" means the software proprietary to Licensee which is included by Licensee in [SPECIFY].

"[SPECIFY] [NAME]" means the [SPECIFY] software distribution designated by Licensee for [NAME]. This [SPECIFY] software distribution for [NAME] includes a [SPECIFY] kernel, Licensee Software and [SPECIFY] Third Party Software. [SPECIFY] for [NAME] includes existing and future versions thereof.

Third Party Software. "Third Party Software" means the software proprietary third parties which are included in [SPECIFY]. "[SPECIFY] Third Party Software means the Third Party Software included by Licensee in [SPECIFY] for [NAME]. “[SOFTWARE NAME] Third Party Software" means the Third Party Software included by Licensor in [SOFTWARE NAME].

"[SPECIFY] [NAME]" means the bundled combination of [SOFTWARE NAME] with [SPECIFY] [NAME] plus third party software, plus any other software the parties agree to add.

"Licensor's version of the bundle" means the bundled combination of [SPECIFY] [NAME] with [SOFTWARE NAME] plus any software the parties agree to add.

"Reseller" shall mean a distributor, OEM, VAR, integrator, retailer, dealer or another reseller.

"Updates" shall mean updates and upgrades to, new versions of, and replacements for [SOFTWARE NAME].

1. **OWNERSHIP**

**2.1 Ownership**

[SOFTWARE NAME] is the proprietary product of Licensor and others in accordance with Sections 3.3 and 3.4 below and is protected by the Copyright and Trademark Laws of the [COUNTRY]. Licensee acknowledges that Licensor and others in accordance with Sections 3.3 and 3.4 below own the intellectual property in [SOFTWARE NAME] software and Licensee makes no claim of ownership to their intellectual property in [SOFTWARE NAME] or [SOFTWARE NAME] itself.

**2.2 Licensor and Licensee Markings**

Licensee and Licensor shall not in any manner act adversely to each other’s Marks, Proprietary Data, or other intellectual property. The licensee shall not remove the Licensor Marks from [SOFTWARE NAME] unless granted in written permission from Licensor. Licensor shall not remove the Licensee Marks from [SPECIFY] unless granted in written permission from Licensor.

* 1. **Mutual Rights and Obligations**

Licensor acknowledges that all rights, ownership, and trademarks of [SPECIFY] for [NAME] are the exclusive property of Licensee and/or Licensee's licensors / suppliers. Licensee acknowledges that all rights, ownership and trademarks of [SOFTWARE NAME] are the exclusive property of Licensor and/or Licensor licensors/suppliers. Licensor shall not in any manner act adversely to the Licensee Marks, Licensee's Proprietary Data or other intellectual property of Licensee. The [NAME] product name and trademark shall belong exclusively to Licensee. The parties will work together in the spirit of an equal partnership so that there is agreement on all product issues such as content, look and feel and licencing terms. Licensee will be sure that the name [SOFTWARE NAME] is featured in all packaging and promotion, web sites and software so that brand equity is built for both parties and their respective products [NAME] and [SOFTWARE NAME]). [SPECIFY] [NAME] must give prominent credit to [SOFTWARE NAME] in all packaging and promotion. Licensor must have the opportunity to approve packaging and promotional materials. Licensor marketing materials, packaging and look & feel must come through in Licensee's packages, web sites and collateral. Licensor is entitled to create its own version of the bundled software and for that version hereby extends to Licensee the same terms listed above.

1. **LICENSE**
	1. **License Grant**

Licensor grants a, non-transferable (except under Section [NUMBER] of the Master Agreement), worldwide right and licence for the [SPECIFY] market during the term of this Agreement, (and Licensee grants Licensor a non-transferable (except under Section [NUMBER] of the Master Agreement), worldwide right and licence for the [SPECIFY] market during the term of this agreement) to do the following:

* + 1. Bundle [SOFTWARE NAME] with [SPECIFY] for [NAME] to create [NAME] and Licensor's version of the bundled product.
		2. Market, distribute, package, and publish [SOFTWARE NAME] and [SPECIFY], including [SOFTWARE NAME] and [SPECIFY] Software and documentation, only as part of [NAME] or Licensor's version of the bundled product and sell [SOFTWARE NAME] and [SPECIFY] licences to end users who receive [NAME];
		3. Use [SOFTWARE NAME] (such use is limited to use by employees or by independent contractors of Licensee for internal use only). Such internal use will require payment of [SPECIFY] licence fees based on the number of CPUs being used. The licensee shall be entitled to purchase such [SPECIFY] licences from Licensor at Licensor's cost. Licensor employees and independent contractors may use [SPECIFY] for internal development.
		4. Copy and reproduce [SOFTWARE NAME] and [SPECIFY] for the purposes of this Agreement.
	1. **[SOFTWARE NAME] is licensed, not sold**

Title to the intellectual property and Source Code in [SOFTWARE NAME] remains with Licensor and its suppliers under Sections 3.3 and 3.4. Licensor and/or its supplier's reserve all rights not expressly granted herein. Without limiting the foregoing, Licensee shall not modify, port, translate, localize, add features or functionality in the Code, or create derivative works of [SOFTWARE NAME], decompile, decrypt, disassemble or otherwise reverse engineer [SOFTWARE NAME], the logic, algorithms or programme code of [SOFTWARE NAME], or attempt to do any of the same. The licensee shall not receive any rights by implication or otherwise in [SOFTWARE NAME] or any component thereof, except as provided in the Business Alliance.

Licensee and Licensor may market, distribute, package and publish [SOFTWARE NAME] and [SPECIFY] under 3.1.2 above, directly to end users and/or indirectly to end users through Licensee's or Licensor's Resellers. Bundling may be accomplished by physical bundling (e.g., inclusion of [SOFTWARE NAME] physical media with [SPECIFY] [NAME] media) or electronic bundling (e.g., by making downloads of [SOFTWARE NAME] available through the same web page as downloads of [SPECIFY] [NAME]) or by otherwise making [SOFTWARE NAME] available in conjunction with [NAME]. The licence and rights granted to Licensee may be exercised with respect to any or all of the [SOFTWARE NAME] products as defined in Exhibit A.

* 1. **A form of User License**

If and to the extent that the parties agree it is practicable, use by an end user of [SOFTWARE NAME] will require a licence key. To obtain a licence key for [SOFTWARE NAME], registration is required by the registered user of the product or by Licensee's Reseller. Registration is accomplished by the end user or Licensee's Reseller accessing a web registration page hosted by Licensor and/or Licensee and filling in the required registration information. Upon completion of the registration process, the registered user will obtain (or the Reseller will obtain for its end user customer) the licence key and a User licence for the [SOFTWARE NAME] software product being registered. The User licence shall be the Software licence Agreement of Attachment B. If obtained by either parties Reseller, then it will be passed on to the end user.

Licensor will provide Licensee with the information requested by Licensee to create and maintain the Licensee web page. Licensee will reciprocate. If this registration process is not utilised or if it does not include a procedure acceptable to Licensor by which the end user accepts the Software licence Agreement, then Licensee has the following obligation: The [SOFTWARE NAME] licences from Licensor that Licensee is authorised to sell under Section 3.1 above shall be sold on behalf of Licensor under this Agreement and are to include the Software licence Agreement attached as Exhibit B to this Agreement. The licensee shall include a copy of the applicable Software licence Agreement with each licence of [SOFTWARE NAME] that Licensee sells. If Licensee believes that it is not practicable to obtain written signatures for the Software licence Agreement, then Licensor shall incorporate into the Software licence Agreement and the [SOFTWARE NAME] Code terms and procedures that provide for the acceptance of the Software licence Agreement by the end user by installing or using [SOFTWARE NAME]. The licensee shall not interfere with such contract acceptance terms and procedures.

The Software licence Agreement shall govern the use of [SOFTWARE NAME] by end user customers. The Software licence Agreement includes a grant by Licensor to the end user to use [SOFTWARE NAME] (including the third party software of Sections 3.3 and 3.4). The Software licence Agreement is an agreement between Licensor and the end user. The licensee is not a party to the Software licence Agreement and has no obligation or liability thereunder.

* 1. **[PRODUCT NAME] License**

[PRODUCT NAME], a product of Emprise, is an embedded product in [SOFTWARE NAME]. licences granted by [PRODUCT NAME] are per CPU, and the number of licences granted is determined by the product purchased. As described in Exhibit A, additional licences are obtained by purchasing the additional CPU product.

* 1. **Third Party Software**

Licensee understands and agrees that the [SOFTWARE NAME] Software utilises software or software components (including [PRODUCT NAME]) from third parties as described in Exhibit 2 to Software licence Agreement of Exhibit B, and said third party software is licenced to an end user each time Licensee sells a [SOFTWARE NAME] licence to an end user. The Software licence Agreement will include a reference to and copy of the applicable third party licence agreements. The end user must agree to abide by the terms of the applicable third party licence agreement(s) through acceptance of the end user's Software licence Agreement as provided in Section 3.4. Licensor and Licensee will amend said Exhibit 2 as necessary to keep it current with the third party software in [SOFTWARE NAME]. Licensor shall be responsible for payment to the applicable third parties for the licence fees, royalties and other payments or costs of third party software in [SOFTWARE NAME] arising from licences of [SOFTWARE NAME] to end users ("third party fees"). If Licensee is the "Selling Party" (as defined in Section 4.2), then end users will pay such third party fees to Licensor through Licensee. The licensee shall be responsible for the collection of these third party fees. Third party fees shall be Licensor's actual cost, without mark-up.

* 1. **Reports**

By the [SPECIFY DATE] the day of each month following the calendar quarter end, Licensee will provide Licensor with the following activity reports:

* 1. License Report: List of all [SOFTWARE NAME] licences sold to end users or Resellers in conjunction or bundled with the [NAME]. If the registered user obtains the licence key and User licence through the web site as described in Section 3.4, this report will be generated by the parties from web site information. Otherwise, Licensee will be required to provide this list as agreed to in 3.7.a. The list may include channel partners and/or registered end users of the product. The report should include copies of [SPECIFY] that Licensee knows will be used to deploy an ecommerce internet or intranet site.
	2. Trouble Report: Problems or bugs believed by Licensee to be caused by errors in the [SPECIFY] Software.
	3. Enhancement Report: Any enhancements and suggestions for improvement of Licensor Software which Licensee desires to suggest to Licensor.
	4. CPU Report: To the extent that [PRODUCT NAME] is included in [SOFTWARE NAME], Licensee is required to provide a listing of the server(s) and total CPUs *per se*rver per licence distributed. The report is to include the name of the end user, address, version of [NAME], hardware and operating system and the number of CPUs. This report, in addition to any other purposes, is required to provide compliance with [PRODUCT NAME] licence requirements as indicated in 3.2 above. If however, the registered user obtains the licence key and User licence through the web site as described in Section 3.4, then this report will be generated by the parties from web site information. Otherwise, Licensee will be required to provide this list as agreed to in 3.7.d.
	5. **Master Copy of the Software**

Licensor will provide Licensee with a master copy of the [SOFTWARE NAME] software products and programmes listed in Exhibit A and for each Update (see Section 6.3). The licensee is authorised to reproduce any such copy solely in connection with exercising the rights granted under this Agreement. Upon termination of this Agreement for any reason, Licensee shall return to Licensor the master copy or copies of the programme and all other copies of the Licensor Software except as needed for continued support under Section 5.3. Licensee will provide a master copy of [SPECIFY] under the same terms.

* 1. **Licensor Marks**

The licensee shall use the Licensor Marks in connection with [SOFTWARE NAME]. The use of the Licensor Marks by Licensee shall strictly adhere to the most recent reasonable written guidelines provided by Licensor. In the absence of written guidelines from Licensor, Licensee shall submit the proposed use of any Licensor Mark to Licensor for Licensor's written approval before such use. All use of the Licensor Marks by Licensee shall inure to the benefit of Licensor. In bundled software packaging, whether physical or on-line, Licensor shall have the right to approve all such packaging as to [SOFTWARE NAME] prior to offering the bundle to market. Licensor shall not unreasonably withhold or delay approval.

* 1. **General Public License**

Both parties understand that [SPECIFY] and certain software in [NAME] are or may be subject to or governed by the applicable General Public licence and/or other applicable open source agreements, and nothing in this Agreement or the Business Alliance shall require either party to act in contradiction of the applicable General Public licence and/or other applicable open source agreements.

* 1. **Exclusive Right to Distribute**

For a period of one year from the Date of First Distribution or [DATE] (whichever is first), Licensor agrees that it will not bundle [SOFTWARE NAME] with any other [SPECIFY] operating system software that competes with Licensee's [SPECIFY] other than Licensee's [SPECIFY] for [NAME] and that Licensor will promote Licensee and [SPECIFY] for [NAME] as the preferred [SPECIFY] solutions for [SOFTWARE NAME]. During this same one year period, Licensee agrees that it will not bundle with [SPECIFY] or [SPECIFY] for [NAME] any other e-Commerce Product that competes with [SOFTWARE NAME] and that Licensee will promote Licensor and [SOFTWARE NAME] as the preferred e-Commerce Product solution for [SPECIFY]. This Section 3.11 imposes no restrictions or obligations on the parties hereto other than as stated in Section 3.11. Neither this paragraph nor the Business Alliance creates any exclusive distributorship on behalf of Licensee or Licensor. Either party to this Business Alliance may distribute the bundled [SPECIFY]/ [SOFTWARE NAME] products directly or indirectly through their respective distribution channels.

* 1. **[SPECIFY] for [NAME] is licensed, not sold**

The [SPECIFY] kernel and any other General Public licence software or open source software is distributed pursuant to and governed by the applicable General Public licence or open source software agreement. Title to the intellectual property and source code in [SPECIFY] for [NAME] remains with Licensee and its licensors or suppliers as applicable. Licensee and/or its licensors and suppliers reserve all rights not expressly granted herein. Without limiting the foregoing, Licensee shall not modify, port, translate, localize, add features or functionality in [SPECIFY] for [NAME], or create derivative works of [SPECIFY] for [NAME], decompile, decrypt, disassemble or otherwise reverse engineer [SPECIFY] for [NAME], the logic, algorithms or programme code of [SPECIFY] for [NAME], or attempt to do any of the same, except as permitted in the applicable licence agreements (see Sections 3.14 and 3.15 below). Licensor shall not receive any rights by implication or otherwise in [SPECIFY] for [NAME] or any component thereof, except as provided in the Business Alliance.

* 1. **A form of User License**

All copies of [NAME] marketed, distributed or published by Licensor must include copies of all licence agreements applicable to [SPECIFY] for [NAME] as provided by Licensee to Licensor. Such licence agreements shall govern the use and licencing of [SPECIFY] for Builder. Licensor shall respect any terms and procedures in any such licence agreement or the software that provide for the acceptance of the licence agreement by the end user by installing or using the software to which the licence agreement applies. Licensor shall not interfere with such contract acceptance terms and procedures. Each such licence agreement is an agreement between Licensee or its licensor or supplier, as applicable, and the end user. Licensor is not a party to these licence agreements and has no obligation or liability thereunder.

* 1. **[SPECIFY] Third Party Software**

Licensor understands and agrees that [SPECIFY] for [NAME] includes [SPECIFY] Third Party Software from third parties and said [SPECIFY] Third Party Software is licenced (under a licence agreement under Section 3.14 above) to an end user each time Licensor or its Reseller distributes or otherwise provides [NAME] to an end user. The end user must agree to abide by the terms of the applicable licence agreements through acceptance of the licence agreements as provided in Section 3.14. As [SPECIFY] Third Party Software or the applicable licence agreements change, Licensee will provide Licensor with new forms of such licence agreements as necessary to keep current with the [SPECIFY] Third Party Software, and Licensor shall use the then-most-current version of the licence agreements. The same applies to any new Licensee Software or changes in Licensee Software licence agreements. The licensee shall be responsible for payment to the applicable third parties for the licence fees, royalties and other payments or costs of [SPECIFY] Third Party Software in [NAME] arising from the distribution of [NAME] to end users ("third party fees"). If Licensor is the "Selling Party" (as defined in Section 4.2), then end users will pay such third party fees to Licensee through Licensor. Licensor shall be responsible for the collection of these third party fees. Third party fees shall be Licensee's actual cost, without mark-up.

* 1. **Reports**

BY THE [DATE] THE DAY OF EACH MONTH FOLLOWING THE LICENSEE QUARTER END, LICENSOR SHALL PROVIDE REPORTS TO LICENSEE ON ALL COPIES OF [NAME] DISTRIBUTED OR PUBLISHED BY LICENSOR TO END USERS OR RESELLERS. SUCH REPORTS SHALL BE AS SIMILAR AS POSSIBLE TO THE REPORTS UNDER SECTION 3.7 BUT DESIGNED TO INCLUDE INFORMATION NEEDED BY LICENSEE FOR ROYALTY PURPOSES, FOR PURPOSES OF [SPECIFY] THIRD PARTY SOFTWARE, AND AS OTHERWISE REASONABLY REQUESTED BY LICENSEE. THE REPORT WILL INCLUDE INFORMATION ON SALES OF [SOFTWARE NAME] THAT LICENSOR KNOWS WILL BE DEPLOYED ON [SPECIFY] AT THE TIME OF THE TRANSACTION.

* 1. **Master Copy of the Software**

Licensee will provide Licensor with a master copy of [NAME] and updates to and new versions of [NAME] (including the [SPECIFY] for [NAME] software therein). The licensee is authorised to reproduce any such copy solely in connection with exercising the rights granted under this Agreement. Upon termination of this Agreement for any reason, Licensee shall return to Licensor the master copy or copies of the programme and all other copies of the [SPECIFY] for [NAME] except as needed for continued support under Section 5.3.

* 1. **Licensor Marks**

Licensor shall use the Licensee Marks in connection with [SPECIFY] for [NAME] (including any marketing, distribution, packaging or publication of [NAME] under Section 3.12), and shall use "[NAME]" (and no other trademark or product name unless and as approved in writing by Licensee) as the trademark and product name for the [NAME] product. The use of the Licensee Marks by Licensor shall strictly adhere to the most recent reasonable written guidelines provided by Licensee. In the absence of written guidelines from Licensee, Licensor shall submit the proposed use of any Licensee Mark to Licensee for Licensee's written approval before such use. All use of the Licensee Marks by Licensor shall inure to the benefit of Licensee. In bundled software packaging, whether physical or on-line, Licensee shall have the right to approve all such packaging as to [NAME] or [SPECIFY] for [NAME] prior to offering the bundle to market. The licensee shall not unreasonably withhold or delay approval.

1. **FEES**

**4.1 Initial Payment**

Licensee and Licensor will pay each other a licence fee of [AMOUNT] in each of the first two quarters after the agreement is signed. The first payment will be made within [NUMBER] days of the execution of this agreement. The second payment will be made with the second quarterly report. This Agreement shall become effective only upon the investment in Licensor by Licensee and the stock exchange referred to in the Master Agreement

* 1. **Royalty**

The "Selling Party" shall mean the party who sells, distributes and/or licences a copy of [NAME] or Licensor's version of the bundled product directly to an end user or to a Reseller. The other party is the "Other Party." "Proceeds" shall mean the gross revenue received by the Selling Party from an end user or a Reseller, whichever is applicable, for the sale, distribution and/or licencing of [NAME] or Licensor's version of the bundled product.

"Third Party Software Payments" shall mean payments to third parties for Third Party Software in [NAME] or Licensor's version of the bundled product. From the Proceeds, all payments payable for applicable Third Party Software shall be made. If Licensee is the Selling Party, then Licensee shall pay such payments for [SPECIFY] Third Party Software directly to the applicable third parties and shall pay such payments for [SOFTWARE NAME] Third Party Software to Licensor, and Licensor shall pass such payment on to the applicable third parties. If Licensor is the Selling Party, then Licensor shall pay such payments for [SOFTWARE NAME] Third Party Software directly to the applicable third parties and shall pay such payments for [SPECIFY] Third Party Software to Licensee, and Licensee shall pass such payment on to the applicable third parties.

Proceeds do not include fees or payments for any support, maintenance or services not included in the price for [NAME]. For example, support, maintenance and other services invoiced or charged separate from the price for the sale, distribution and/or licencing of [NAME] or Licensor's version of the bundled product, are not subject to the Royalty. Software products which are distributed or licenced in conjunction with [NAME], but not included by either party in [NAME] or Licensor's version of the bundled product, shall not be subject to the Royalty, *i.e.*, the Royalty is not payable on the sales price received by the Selling Party for such other software products.

"Net Proceeds" shall mean Proceeds minus Third Party Software Payments.

"Net Revenue" shall mean [%] of Net Proceeds.

The "Royalty" payable by the Selling Party to the Other Party shall be [%] of Net Revenue.

The parties agree that they will review on a quarterly basis by the last day of [SPECIFY MONTH], [SPECIFY MONTH], [SPECIFY MONTH], and [SPECIFY MONTH] of each calendar year, the definition and percentages of net revenue.

Licensor may have customers who choose to deploy [SOFTWARE NAME] on [SPECIFY] distributions that compete with Licensee. Licensor will promote the [NAME] bundle or Licensor's version of the bundled product to customers who ask for [SPECIFY]. If the customer insists on purchasing [SOFTWARE NAME] and not the bundle Licensor may sell it to them. If Licensor knows at the time of any transaction that [SOFTWARE NAME] will be deployed on [SPECIFY], then that sale is subject to the royalty payments described above.

Licensor may choose to refer customers who seek a [SPECIFY] Support Agreement to Licensee. If Licensee signs an agreement with a customer referred by Licensor, then Licensee will give Licensor [%] of the first [NUMBER months revenue as a referral fee.

Licensee may choose to refer customers who seek support on [SOFTWARE NAME] to Licensor. If Licensor signs an agreement with a customer referred by Licensee, then Licensor will give Licensee [%] of the first [NUMBER] month’s revenue as a referral fee.

 **Payment**

Selling Party will make quarterly payments to Other Party of the royalty amounts Other Party is entitled to receive hereunder. Payments will accompany the quarterly reports described in section 3.5. Reports and payments are due the [SPECIFY DATE] the day of that month which follows the end of each calendar quarter. To compensate for the loss of the use of money and the administrative expense involved in collecting past due amounts, all amounts past due or in default under this Agreement shall bear interest at a rate of [%] percent per month.

**Taxes and Other Fees**

As between Selling Party and Other Party, Selling Party shall be responsible for payment of all sales, use and other taxes, fees and/or assessments of any sort which come due because of or are related to transactions between Selling Party and its customers. Selling Party shall also pay, at its own expense, all import and export licences and permits, customs charges, and duty fees required to [SPECIFY] accomplish the export and import of the licences sold by Selling Party. However, all of the foregoing are not including in Proceeds. Nothing herein applies to Other Parties income taxes.

**Inspection of Selling Party Records**

Upon [NUMBER] days written notice to Sell Party, at Other Parties expense (except as otherwise provided below), and no more often than once per year, Other Parties designated representative, or its independent certified public accountant shall have the right to inspect Selling Parties records relevant to the royalty or selling parties compliance with the alliance during business hours solely for the purposes of verifying the royalty amounts due to Other Party and Selling Parties compliance with the provisions of this licence and all related Contracts under the Master Agreement. A final inspection shall occur no later than [NUMBER] year after the termination of this Agreement. Selling Party shall make immediate payment of any amounts that an inspection accurately shows to be due to Other Party. If, as a result of any such inspection, it is accurately determined that the amount paid or due from Selling Party to Other Party for the period being reviewed has been understated by an amount in excess of [%] percent of the total amount due Other Party, then Selling Party shall promptly pay the reasonable cost of such inspection. Other Parties representative or independent certified public accountant must agree in writing with Selling Party to keep confidential Selling Parties records and the contents thereof, except for reasonable disclosures to Other Party relating to Selling Parties failure to pay the royalty and/or Selling Parties failure to comply with its obligations under any of the contracts to the Business Alliance. Other Party must keep such disclosures confidential and not use for any purpose, except as necessary to enforce Selling Parties royalty obligation or any terms of the contracts of the Business Alliance.

1. **TERM AND TERMINATION**

**5.1 Term**

Unless terminated earlier as provided herein, the initial term of this Agreement shall be [NUMBER] years from the date of this Agreement, and the term of this Agreement shall automatically renew for an unlimited number of successive [NUMBER]-year terms. However, either party may terminate this Agreement by giving at least [NUMBER] days advance written notice of termination to the other party, provided that the date of such termination does not occur prior to the end of said initial [NUMBER] year term. Either party may terminate this Agreement for any reason or no reason as provided in the Master Agreement.

* 1. **Rights Not Terminated**

The termination or expiration of this Agreement shall not affect any licences granted or sold to end-users prior to such termination or expiration. Upon such termination or expiration, each party (the "first party") shall use all commercially reasonable efforts to return or destroy all materials provided by another party to the first party during the term of this Agreement, as specifically provided in the Master Agreement, but subject to Section 5.3.

* 1. **Support of Existing End Users**

Notwithstanding anything herein to the contrary, in the event of termination or expiration of this Agreement, the parties shall cooperate to ensure that end users who received [NAME] under this Agreement prior to termination or expiration shall continue to receive the support and maintenance contemplated by this Agreement for at least [NUMBER] years. Licensee and Licensor may continue to meet their respective support and maintenance obligations to such end users as established in good faith prior to the date of termination.

* 1. **Termination for Non-Performance**

In the event that [NAME] has not been made available for shipping by [DATE], either party may terminate this agreement with [NUMBER] day’s written notice.

1. **SOFTWARE SUPPORT, DEVELOPMENT SUPPORT, UPGRADES AND TRAINING**
	1. **Support Obligations**

The selling party shall provide first and second line support to customers for the Licensee Software and the Licensor Software during the term of this Agreement. The non-selling party shall provide third line support. The Selling party will be responsible for communicating third line support requests to the other party. Third line support means technical support, consultation with support personnel (and end users if necessary), trouble shooting, diagnosis of problems, and back-up support to first and second lines of support. Licensor and Licensee shall provide respective support for their Software in accordance with the following support hours and response times. Licensor and Licensee will review support hours and response times guidelines on a quarterly basis and make appropriate adjustments as mutually agreed upon: Working Hours (Hours of Live Support by both parties) live escalation call support [SPECIFY DAY] - [SPECIFY DAY] [SPECIFY HOUR] am - [SPECIFY HOUR] pm [SPECIFY TIME ZONE] Time during normal business days (non-holidays).

**Holidays -** Licensor will notify Licensee each year of Licensor's annual holiday schedule, and *vice versa*.

**Response Times.-** Licensor and Licensee will accept escalation support incidents from each other via e-mail and/or telephone for Severity 2 or 3 incidents, and the other party will acknowledge such incidents within [SPECIFY HOURS] working hours. Each party will make best effort to reply to and resolve Severity 2 incidents within [NUMBER] business days, and Severity 3 incidents within [NUMBER] business days.

The parties will accept escalation support incidents from each other only via telephone for Severity 1 incidents, and the other party will acknowledge such incidents within [NUMBER] working hour. Each party will make the best effort to reply to and resolve Severity 1 incidents within [NUMBER] business hours.

Severity is the impact the problem has on business operations. Severity 1, 2, and 3 incidents are defined below:

1. for Errors that result in an emergency condition that causes critical impact to end user's schedule, cause a serious security breach, or that make performance or continued performance of any feature or function impossible or impracticable by the end user.
2. for errors that significantly affect an end user's schedule, cause a minor security breach or which make the performance or continued performance of any feature or function difficult that cannot be circumvented or avoided on a temporary basis by the end user.
3. for errors that are not critical in that performance can be continued without difficulty or loss of data by easy circumvention or avoidance by the end user.
	1. **Development Support**

Development and Software implementation for the integration of [SOFTWARE NAME] to the Licensee [SPECIFY] [NAME] Licensee Software and tools will be defined through Licensor and Licensee Product Management procedures. Both parties will dedicate resources to support and ensure integration and success of the bundled Software.

* 1. **Updates and Bug Fixes**

Licensor shall maintain [SOFTWARE NAME] and correct bugs and programming errors in [SOFTWARE NAME]. Within a commercially reasonable time, Licensor shall provide maintenance fixes, corrections, and patches to Licensee for distribution by Licensee to end users under licences sold by Licensee. Such maintenance fixes, corrections, and patches shall be governed by this Agreement as part of [SOFTWARE NAME]. When possible, Licensor shall provide work-around solutions and temporary fixes as soon as possible while Licensee and end users are awaiting such maintenance fixes, corrections, and patches. The licensee shall use commercially reasonable efforts to provide to Licensor information known to Licensee necessary (including, where appropriate, reproducible test cases and other diagnostic information) to diagnose and correct or repair such problems as Licensee may report to Licensor. The licensee makes the same promises to Licensor.

Licensor shall deliver Updates to Licensee as soon as they become available. Updates shall be governed by this Agreement as [SOFTWARE NAME]. The licensee makes the same promises to Licensor.

As Licensor creates commercial versions of [SOFTWARE NAME] for other operating systems or platforms, Licensor will also port such commercial versions to [SPECIFY] and provide the same to Licensee as Updates, provided that the port to [SPECIFY] is commercially viable. In the event Licensor elects to not make any such port to [SPECIFY], then Licensee may do so at its expense.

* 1. **Training**

Within [NUMBER] days of the execution of this Agreement, Licensor will provide [NUMBER] days of free training for [NUMBER] Licensee employees. The licensee is responsible for the travel and expense costs of Licensee personnel to Licensor facilities in [STATE/PROVINCE]. If Licensee requests that training take place at Licensee facilities and Licensor agrees, then Licensee will be charged for the time of Licensor's personnel, travel, hotels, and other associated costs for Licensor's personnel, as well as training facilities and associated costs.

For their respective support obligations, Licensor and Licensee will pay each other [AMOUNT] per month for the life of the agreement (unless each party agrees to waive the fee). Payment will be due quarterly at the same time as the product royalty payment.

Licensor will provide Licensee with a training manual that both parties agree is sufficient for Licensee's internal use within [NUMBER] days of the signing of this agreement.

1. **COVENANTS OF THE PARTIES**
	1. **Protect Intellectual Property**

The licensee shall use its best commercially reasonable efforts to protect Licensor's and its licensors' / suppliers' intellectual property and proprietary rights in the Licensor Software, Proprietary Data, Licensor Marks, and other intellectual property of Licensor. Licensor shall use its best commercially reasonable efforts to protect Licensee's and its licensors' / suppliers' intellectual property and proprietary rights in the Licensee Software, Proprietary Data, Licensee Marks, and Licensee's other intellectual property.

* 1. **Representations/Warranties Concerning Software**

The licensee shall make no representations or warranties about the Licensor Software in excess of the representations or warranties contained in the Exhibit B Software licence Agreement attached hereto or otherwise made by Licensor if in writing and made specifically for Licensee or its end-users. Licensor shall make no representations or warranties about the [SPECIFY] for [NAME] software in excess of the representations or warranties contained in the licence agreements of Sections 3.14 and 3.15, or otherwise made by Licensor, if in writing and made specifically for Licensor or its end-users.

* 1. **Mutual Representations**

Each party (the "first party") represents and warrants to the other party that the first party (a) has not relied on any promises or representations not expressly made in this Agreement or the Business Alliance; (b) possesses the facilities, personnel, and experience necessary to meet its financial and other commitments under this Agreement; (c) has the full right, power and authority to enter into this Agreement and to carry out its obligations under this Agreement; and (d) knows of no impediments that would prevent the first party from complying with all the terms of this Agreement.

* 1. **Notification of Infringement**

If the management of Licensee becomes aware of the unauthorised use, copying, or disclosure of the Licensor Software, Licensor Marks, or Licensor's Proprietary Data, Licensee will notify a Licensor representative. The licensee shall assist Licensor, at Licensor's request and expense, in the investigation and prosecution of such unauthorised use, copying, or disclosure.

If the management of Licensor becomes aware of the unauthorised use, copying, or disclosure of the [SPECIFY] for [NAME] software, Licensee Marks, or Licensee's Proprietary Data, Licensor will notify a Licensee representative. Licensor shall assist Licensee, at Licensee's request and expense, in the investigation and prosecution of such unauthorised use, copying, or disclosure.

1. **WARRANTIES**
	1. **Limited Warranties**
		1. Licensor represents and warrants to and for the benefit of Licensee that
			1. the Licensor Software and [SOFTWARE NAME] do not infringe any valid [COUNTRY] patent, copyright, or trademark, or include any misappropriated trade secret, or violate any privacy or other rights of any third party and
			2. Licensor has full right, power, and authority to enter into this Agreement and to carry out its obligations hereunder.
		2. Licensor represents and warrants that the Licensor Software is and will be Year [SPECIFY] [YEAR] Compliant. "Year [SPECIFY] [YEAR] Compliant" means that the Licensor Software is designed for use prior to, during and after [DATE] and will conform to the following:
			1. Date data representative of years are represented or stored in a four digit format, *i.e.*, a full representation of the year (e.g., "[SPECIFY] (2010") rather than a partial representation of the year (e.g., "10").
			2. The screen displays, reports and printed output generated by the Licensor Software will show years in four digit format.
			3. The Licensor Software will not include any two digit representation of years that causes: (a) execution of the Licensor Software to terminate abnormally, (b) invalid values or incorrect results in century date data, (c) ambiguity in the recognition of century date data, or (d) other errors or problems.
			4. The calculations performed by the Licensor Software will accommodate the use of both same-century date values and multi-century date values.
			5. The calculations performed by the Licensor Software will accurately accommodate the occurrence of leap years.

This warranty is subject to the following: This warranty does not apply to any third party software integrated into [SOFTWARE NAME] or to modifications or enhancements to the Licensor Software made by persons other than Licensor or its contractors. All date data and date values received by the Licensor Software must be accurate, in a four digit century format, and otherwise compatible with the Licensor Software. Licensor is not responsible for inaccuracies, inadequacies or problems caused by (a) any computer programmes and databases not licenced by Licensor to Licensee, and (b) any hardware. Any use of, or interaction with, the Licensor Software must be in accordance with Licensor's then-current documentation and instructions and within the scope of the License.

* + 1. Licensor warrants to Licensee that no master copy of the Licensor Software provided by Licensor under this Agreement, except for demonstration or evaluation software, will contain or be accompanied by any Self-Help Code or Unauthorised Code (as defined below). This warranty shall not be applied to Licensor software delivered over the Internet to which such Unauthorised Code may have been attached outside of Licensor's control.

"Self-Help Code" means any back door, time bomb, drop dead device, or other routine, code, algorithm or hardware component designed or used: (i) to disable, erase, alter or harm the Licensor Software or any computer system, program, database, data, hardware or communications system, automatically with the passage of time, or under the control of, or through some affirmative action by, a person other than Licensee or its Affiliate, or (ii) to access any computer system, program, database, data, hardware or communications system of Licensee or its Affiliate. "Self-Help Code" does not include any code in the Licensor Software or any accompanying hardware component designed and used to permit Licensor to obtain access to the Licensor Software on Licensee's or its Affiliate's computer system (e.g., remote access via modem) solely for purposes of providing maintenance or technical support to Licensee or its

Affiliate provided that such code or hardware component is first disclosed to Licensee and approved by Licensee in writing.

"Unauthorised Code" means any virus, Trojan horse, worm, or other routine, code, algorithm or hardware component designed or used to disable, erase, alter, or otherwise harm any computer system, program, database, data, hardware or communications system, or to consume, use, allocate or disrupt any computer resources, in a manner which is malicious or intended to damage or inconvenience. The term Unauthorised Code does not include Self-Help Code.

Licensor warrants that [SOFTWARE NAME] will conform to the Documentation provided by Licensor in connection with [SOFTWARE NAME] and any then effective published specifications, descriptions or statements from Licensor concerning [SOFTWARE NAME] that are made in writing to Licensee for the benefit of Licensee or its end users. The licensee makes the same warranties and covenants to Licensor with respect to Licensee's products as contained in this section.

* 1. **Exclusions**

Licensor makes no warranty concerning, and shall have no liability with respect to

1. Software not delivered by Licensor;
2. Use of the Licensor Software in a manner for which it was not designed;
3. Licensee's modification of the Licensor Software in a manner to become infringing; or
4. Any use of the Software in violation of this Agreement. Licensor does not warrant that the Software is free from errors or that it will interface without any problems with Licensee's or any end-user's computer system. However, this does not negate or limit Licensor's obligations of maintenance and support. Licensor shall not be liable for any damage or loss to Licensee's computer or data resulting from the evaluation or use of the Licensor Software.

The licensee makes no warranty concerning, and shall have no liability with respect to

1. Software not delivered by Licensee;
2. Use of the Licensee Software in a manner for which it was not designed;
3. [SPECIFY]'s modification of the Licensee Software in a manner to become infringing; or
4. Any use of the Software in violation of this Agreement. Licensee does not warrant that the Software is free from errors or that it will interface without any problems with Licensee's or any end-user's computer system. However, this does not negate or limit Licensee's obligations of maintenance and support. The licensee shall not be liable for any damage or loss to Licensor's computer or data resulting from the evaluation or use of the Licensee Software.

**8.3 Disclaimer**

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THE BUSINESS

ALLIANCE, THE LICENSOR SOFTWARE IS OFFERED "AS IS" WITH ALL FAULTS. LICENSEE MAKES NO WARRANTIES NOT EXPRESSLY SET FORTH IN THE BUSINESS ALLIANCE. ALL WARRANTIES AND OTHER TERMS WHICH WOULD OTHERWISE BE IMPLIED OR INCORPORATED INTO THIS AGREEMENT BY STATUTE OR COMMON LAW ARE HEREBY EXCLUDED BY THE PARTIES. THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY DISCLAIMED BY LICENSOR AND LICENSEE. IT IS EXPRESSLY AGREED THAT LICENSOR SHALL NOT BE IN ANY WAY RESPONSIBLE FOR THE COMMERCIAL SUCCESS OF THE LICENSOR SOFTWARE OR THE BUNDLED SOFTWARE AND THAT LICENSEE SHALL NOT BE IN ANY WAY RESPONSIBLE FOR THE COMMERCIAL SUCCESS OF LICENSEE SOFTWARE OR LICENSOR SOFTWARE BUNDLED WITH LICENSEE SOFTWARE. THERE ARE NO GURANATEED SALES OR MINIMUM ROYALTIES. NEITHER PARTY MAKES ANY WARRANTIES CONCERNING ANY THIRD PARTY SOFTWARE AND HAS NO OBLIGATION TO INDEMNIFY, DEFEND OR HOLD HARMLESS WITH RESPECT TO THIRD PARTY SOFTWARE.

* 1. **Response to Any Infringement Claim**

If Licensee receives notice of any claim that the Licensor Software infringes a [COUNTRY] or foreign patent or copyright, Licensee shall promptly give written notice of the claim to Licensor in accordance with Section 9.2 below. If Licensor determines that the claim may have merit, Licensor may instruct Licensee to cease selling licences for the Licensor Software. Licensor shall have no obligation to indemnify Licensee for any sales of licences that occur (a) after Licensee has notice of the infringement claim but before notice of such claim is given to Licensor, or (b) after Licensor has instructed Licensee to cease selling licenses, except for sales that are required by contractual commitments existing prior to (a) and (b) above. Upon receiving notice of the claim and determining that the claim may have merit, Licensor shall use commercially reasonable efforts to (a) procure the right to continue using the Licensor Software or portions thereof and all rights and licences necessary for this Agreement and the Business Alliance; or (b) modify or replace all or part of the concerned Licensor Software to avoid any infringement, provided that the modified Licensor Software or the replacement is substantially the same or better in functions, features and performance. If Licensor determines that it is not able to do either of the foregoing in a commercially reasonable fashion, as determined by Licensor in Licensor's sole discretion, Licensor may terminate Licensee's licence to sell further licences of the Licensor Software (*i.e.*, remove the infringing Licensor Software from [NAME]. In such case, Licensee shall have the right to terminate all future obligations of the parties under the Business Alliance, including this Agreement.

If Licensor receives notice of any claim that the Licensee Software infringes a [COUNTRY] or foreign patent or copyright, Licensor shall promptly give written notice of the claim to Licensee in accordance with Section 9.2 below. If Licensee determines that the claim may have merit, Licensee may instruct Licensor to cease selling licences for the Licensee Software. Licensee shall have no obligation to indemnify Licensor for any sales of licences that occur (a) after Licensor has notice of the infringement claim but before notice of such claim is given to Licensee, or (b) after Licensee has instructed Licensor to cease selling licenses, except for sales that are required by contractual commitments existing prior to (a) and (b) above. Upon receiving notice of the claim and determining that the claim may have merit, Licensee shall use commercially reasonable efforts to (a) procure the right to continue using the Licensee Software or portions thereof and all rights and licences necessary for this Agreement and the Business Alliance; or (b) modify or replace all or part of the concerned Licensee Software to avoid any infringement, provided that the modified Licensee Software or the replacement is substantially the same or better in functions, features and performance. If Licensee determines that it is not able to do either of the foregoing in a commercially reasonable fashion, as determined by Licensee in Licensee's sole discretion, Licensee may terminate Licensor's licence to sell further licences of the Licensee Software (*i.e.*, remove the infringing Licensee Software from [NAME]). In such case, Licensor shall have the right to terminate all future obligations of the parties under the Business Alliance, including this Agreement.

1. **CROSS INDEMNITY**
	1. **Indemnification**

Each party (the "first party") hereby agrees to indemnify, defend and hold the other party harmless from and against any and all losses, damages, judgments, settlements, liabilities, costs, charges and expenses, including reasonable attorneys' fees, arising out of or from any infringement or claim of infringement of any patent, copyright, trade secret, trademark or other proprietary right. When the infringement or claim of infringement applies to Licensor Software, then Licensor is the "first party." When the infringement or claim of infringement applies to Licensee Software, then Licensee is the "first party." The exclusions of Section 8.2 or elsewhere shall also be exclusions from the first party’s obligations to indemnify, defend and hold harmless the other party hereunder. Regarding the part of said indemnity running from first party in favour of the other party, the first party shall indemnify, defend and hold harmless the other party only if: (i) the infringement is not caused by the combination of the Software (Licensor Software if Licensor is the first party; and Licensee Software if Licensee is the first party) with any other item not provided by the first party, including but not limited to software, data, or hardware, (ii) notification by the indemnified party shall be in accordance with Section 9.2 below. And (iii) the indemnified party allows the indemnifying party to control any litigation and settlement of such infringement charges in accordance with Sections 9.3 and 9.4 below. Should any portion of the Software (Licensor Software if Licensor is the first party; and Licensee Software if Licensee is the first party) or its intended use become, or in the first parties opinion be likely to become, the subject of a claim of infringement of a [COUNTRY] patent, copyright or other proprietary right, then Section 8.4 above shall apply. The first party’s liability and obligation to the other party in the event of infringement or claimed infringement should be strictly limited to the obligations set forth in this Article 9.

* 1. **Notice of Claims**

A party entitled to indemnification under Section 9.1 or any other provision of this Agreement (an "Indemnified Party") shall give the party required to provide such indemnification (the "Indemnifying Party") written notice of any claim for indemnification promptly after the Indemnified Party actually learns of the existence of such claim. The Indemnifying Party shall have no obligation with respect to any claim to the extent that failure to promptly give such notice materially prejudices the ability of the Indemnifying Party to defend such claim.

* 1. **Conduct of Defense**

The Indemnified Party shall permit the Indemnifying Party to assume the defence of any claim covered by the indemnification. The Indemnified Party shall have the right to approve the counsel who shall conduct the defence of the claim but shall not withhold such approval unreasonably. The Indemnified Party may participate in the defence at the Indemnified Parties expense.

* 1. **Settlements**

No Indemnifying Party, in defence of any claim, shall, except with the consent of each Indemnified Party, consent to the entry of any judgement  or enter into any settlement that does not include an unconditional release by the claimant of the Indemnified Party from all liability *in re*spect to the claim. The Indemnified Party shall not settle any Claim without the consent of the Indemnifying Party. The consent of the Indemnifying Party is a condition to the obligation of the Indemnifying Party to pay money pursuant to this Article 9. The Indemnifying Party shall not unreasonably withhold consent to any proposed settlement. The settlement must not include any obligation on the part of the Indemnified Party, *i.e.*, the settlement must be satisfied by the Indemnifying Party in full.

1. **LIMITATION OF LIABILITY**
	1. **Extent of Liability**

Except for liabilities and obligations under Section 8.4 or Article 9, and the royalty fees due Licensee pursuant to this Agreement and any interest thereon, Licensor's liability arising out of this Agreement or arising out of the use or distribution of the Licensor Software by Licensee shall be limited to the amount paid by Licensee to Licensor for the Licensor Software. Except for liabilities and obligations under Section 8.4 and Article 9, and the royalty fees due Licensor pursuant to this Agreement and any interest thereon, Licensee's aggregate liability to Licensor shall not exceed a limit equal to the same amount. Notwithstanding the foregoing, the limitation of liability under this section 10.1, does not apply to liabilities that arise to either party as a result of actions that infringe the intellectual property or violate Confidential Information responsibilities under this Agreement.

* 1. **DISCLAIMER**

IN NO EVENT SHALL LICENSOR OR LICENSEE BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY ANYONE (OTHER THAN AS PROVIDED FOR IN SECTIONS 8.4 AND 9.1), NOR WILL LICENSOR OR LICENSEE BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, RELATING TO THIS AGREEMENT OR RESULTING FROM A USE OR INABILITY TO USE THE LICENSOR SOFTWARE OR LICENSEE SOFTWARE, OR [NAME] OR [SPECIFY] FOR [NAME], HOWEVER CAUSED, ARISING UNDER ANY CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT LICENSOR OR LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE ESSENTIAL PURPOSE OF THIS SECTION 10.2 IS TO LIMIT THE POTENTIAL LIABILITY OF LICENSOR AND LICENSEE ARISING OUT OF THIS AGREEMENT. Notwithstanding the foregoing, the limitation of liability under this section 10.2, does not apply to liabilities that arise to either party as a result of actions that infringe the intellectual property or violate Confidential Information responsibilities under this Agreement.

1. **CONFIDENTIALITY**

Licensor and Licensee agree that each of them shall, during the term of this Agreement and for so long thereafter as the information remains confidential, take all steps which are reasonable to safeguard the confidentiality of, and proprietary rights to, the confidential information ("Confidential Information") of the other party which may be disclosed under this Agreement (including, but not limited to, product

plans, designs, business plans, technical specifications, research, and customer or financial data, and Proprietary Data) and shall not, without the prior written consent of the other party, (a) use such Confidential Information for its own benefit or the benefit of any third party except for purposes expressly provided for in this Agreement, or (b) disclose such Confidential Information to any third party. This Article 11 shall not be construed to restrict, and Confidential Information shall not include, information which (a) is publicly known at the time of its disclosure to the receiving party, (b) is lawfully received by a party from a third party not bound in a confidential relationship to the disclosing party, (c) was already known by the receiving party prior to disclosure by the disclosing party, or (d) is independently developed or created by the receiving party without use of the Confidential Information from the disclosing party. There is no restriction on disclosures required by law or court order. If, however, either party is issued a *Subpoena* or court order requiring disclosure of confidential information, it shall provide the other party hereto notice of such *Subpoena* or notice and provide said party an opportunity to contest it. Confidential Information which becomes publicly known through no fault of the receiving party after disclosure to the receiving party shall cease to be Confidential Information.

1. **RESTRICTED RIGHTS OF GOVERNMENT USERS**

If an end user of any Licensor Software will be an agency, department, or other entity of the [COUNTRY] Government (the "Government"), the end user's Software licence Agreement shall include such "restricted rights of government users" clause as Licensor has included in Exhibit B.

IN WITNESS WHEREOF the parties through their duly authorised representatives have caused this OEM licence Agreement to be executed was of the date first set forth above.

LICENSOR LICENSEE

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**ANNEXURE A**

**TO OEM licence AGREEMENT**

[SOFTWARE NAME]

[SOFTWARE NAME](TM) Enterprise

[SOFTWARE NAME](TM) Multi-Store

Additional Store-Fronts for [SOFTWARE NAME] Multi-Store

Additional Server License

[SOFTWARE NAME](TM) Enterprise Annual Software Maintenance

[SOFTWARE NAME] (TM) Multi-Store Annual Software Maintenance

Pricing for [PRODUCT NAME]

[Insert Pricing]

[PRODUCT NAME] for [SPECIFY]

Each party will unilaterally determine the price at which it sells, licences or distributes [NAME].

As of the date of this Agreement, there are no fees payable for any third party software in [SOFTWARE NAME] other than [PRODUCT NAME]. If any fees become payable to third parties for third party software in [SOFTWARE NAME], then [SPECIFY] shall provide as much advance written notice as reasonably possible and this Exhibit shall be amended by the parties to make it current.

[SPECIFY] will use its best reasonable efforts to negotiate and obtain the most favourable pricing for [PRODUCT NAME] and other third party software in [SOFTWARE NAME].

**ANNEXURE B**

**TO OEM licence AGREEMENT**

[SOFTWARE NAME](TM) [NUMBER]

SOFTWARE licence AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE INSTALLATION AND USE OF THE PROGRAM. LICENSOR INTERNET WILL licence THE programme TO YOU (LICENSEE) ONLY IF YOU FIRST ACCEPT THE TERMS OF THIS AGREEMENT. BY USING THE PROGRAM, YOU AGREE TO THESE TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, EXIT INSTALLATION NOW. ERASE, DESTROY, OR RETURN THE SOFTWARE TO LICENSOR.

1. **LICENSE GRANT AND LIMITATION**
	1. LICENSE. Subject to the terms and conditions of this Agreement, Licensor grants Licensee a perpetual (except in the event of termination under section 13(b)), nontransferable, non-assignable, nonexclusive licence to use one copy of [SOFTWARE NAME] (TM) Software ("Software") and user documentation. The Software licences covered by this agreement are listed in Exhibit 1 hereto.
	2. MODULAR BASED. Licensee understands and agrees that the Software is modular based to facilitate distributive computing.
	3. LIMITATIONS. Licensor and/or its supplier's reserve all rights not expressly granted herein. Without limiting the generality of the preceding sentence, Licensee receives no rights and agrees:
		1. not to modify, port, translate, localize, add features or functionality, or create derivative works of the Software,
		2. not to decompile, decrypt, disassemble or otherwise reverse engineer the Software, algorithms, logic or programme code of the Software or any derivative work thereof, or attempt to do any of the same. Licensee does not and shall not receive any rights by implication or otherwise in the Software or any component thereof.
		3. WEB SITE DISPLAY. The licensee shall, throughout its use of the Software, display the following or something similar on its home page and product pages:

"[SOFTWARE NAME] (TM) by [COMPANY NAME]. Setting the Standard for [SPECIFY]."

Or, a "powered by [SOFTWARE NAME] TM button represented with a Licensor/ [SOFTWARE NAME] graphic provided by Licensor.

1. **DELIVERABLES**

Licensor or its distributor shall provide Licensee one executable copy of the object code version of the Software and one copy of the Software's user documentation. The licensee shall not copy the Software (except for one archival copy for back up purposes only) or the user documentation, subject to the conditions referred to in the licence grant herein.

1. **TITLE**

The Software is licensed, not sold. Title to the Software remains with Licensor. Title to any third party software used by the Software remains with the third party.

1. **THIRD PARTY SOFTWARE**

Licensee understands and agrees that the Software utilises software components from third parties as described in Exhibit 2 and said third party software is licenced to Licensee pursuant to the terms of the licence agreement(s) as stated in Exhibit 2. Licensee hereby agrees to abide by the terms of the third party licence agreement(s) included in Exhibit 2 which accompany this Agreement. Licensor makes no warranties regarding third party software.

1. **INSTALLATION**

The licensee shall be responsible for the installation of the Software.

1. **CONFIDENTIALITY**

Licensee agrees that neither Licensee, its agents nor its employees shall in any manner use, disclose or otherwise communicate any information with respect to the Software which might enable use or copying of all or any portion of the Software. Licensee agrees to take all necessary action to protect the confidential and proprietary information included in the Software, including appropriate instruction and agreement with its employees.

1. **SOFTWARE SUPPORT POLICY**

This licence does not guarantee software support from Licensor. Any software support is provided by separate agreement with the distributor of this software.

1. **WARRANTIES**
	1. Licensor warrants that it has clear title to the Software. Licensor warrants to Licensee that it has all necessary rights, power and authority to enter into this Agreement and to grant the rights granted under this Agreement.
	2. Licensee warrants that it has all necessary rights, power and authority to enter into this Agreement and to grant the rights granted under this Agreement.
	3. Licensor warrants that the Software as delivered to Licensee is not contaminated by harmful computer programming code.
	4. Company warrants that the software accurately processes date/time data (including but not limited to, calculating, comparing and sequencing) from, into, and between the [NUMBER] and [NUMBER] centuries, and the years [SPECIFY YEAR] and [SPECIFY YEAR] and leap year calculations, to the extent that other information technology properly exchanges date/time data with it.
	5. For [NUMBER] days from the date software is installed, Licensor warrants that the Software will perform substantially in accordance with the accompanying documentation, and the Software media will be free from defects in materials and workmanship. In the event of a breach of this warranty, Licensor shall (a) refund to Licensee the price paid for the Software, or (b) repair or replace the Software that does not meet this Limited Warranty.
	6. EXCEPT AS OTHERWISE PROVIDED HEREIN, THE SOFTWARE AND THE ACCOMPANYING WRITTEN MATERIALS ARE PROVIDED "AS IS" WITHOUT EXPRESS OR IMPLIED WARRANTY OF ANY KIND. [SPECIFY] FURTHER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION OR THAT THE SOFTWARE DOES NOT INFRINGE ANY COPYRIGHT, PATENT, ETC. OF ANY THIRD PARTY. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE AND ACCOMPANYING WRITTEN MATERIALS REMAINS WITH LICENSEE.

The Software is not designed or licenced for use in hazardous environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems. Without limiting the generality of the foregoing, Licensor specifically disclaims any express or implied warranty of fitness for such purposes.

1. **INDEMNITY**

Both parties shall indemnify, defend and hold the other party harmless from and against any and all losses, damages, liabilities, costs, charges and expenses, including reasonable attorneys' fees, arising out of any breach by either party of their obligations under this agreement or from any infringement or claim of infringement of any patent, copyright, trade secret, trademark or other proprietary right based on or arising out of the creation, use or installation by Licensee of the Software. Regarding the part of said indemnity running from Licensor in favour of Licensee, Licensor shall indemnify and hold harmless Licensee for any liability for infringement of any [COUNTRY] patent, copyright or trade secret rights of and due to a third party caused solely by the use of the Software in accordance with the Software's documentation, provided that: (i) the infringement is not caused by the combination of the Software with any other item not provided by the Licensor, including but not limited to software, data, or hardware, (ii) Licensee notifies Licensor in writing within [NUMBER] days of Licensee's first knowledge of a charge of infringement of patent, copyright or trade secret rights by another party, and (iii) Licensee agrees to allow Licensor to fully control any litigation and settlement of such infringement charges provided any such settlement does not require the Licensee to make any payment.

1. **NO CONSEQUENTIAL DAMAGES**

Licensor shall not be liable to Licensee for indirect, special, incidental, exemplary, punitive, or consequential damages (including, without limitation, lost profits) related to this Agreement or resulting from Licensee's use or inability to use the Software, arising from any cause of action whatsoever, including without limitation, contract, warranty, strict liability, or negligence, even if notified of the possibility of such damages.

1. **LIMITATION ON RECOVERY**

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL LICENSOR BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS LICENSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THIS LIMITATION MAY NOT APPLY TO YOU. In no event shall either Licensor's total liability to you for all damages exceed the amount paid for this licence for the Software.

1. **PROPRIETARY RIGHTS**

Except as expressly provided for in Section 1 of this Agreement, Licensor and/or its suppliers retain any and all right, title and interest in and to the Software. This Agreement grants no additional express or implied license, right or interest in any copyright, patent, trade secret, trademark, invention or another intellectual property right of Licensor Internet, Inc. or its suppliers. Licensee receives no rights to and will not distribute, sublicense, sell, assign, lease market, transfer, encumber or suffer to exist any lien or security interest on the Software, nor will Licensee take any action that would cause the Software to be placed in the public domain. Licensee will not remove, or allow to be removed, any Licensor copyright, trade secret or other proprietary rights notice from the Software. Licensee will not make any warranties with respect to the Software beyond those made to Licensee by Licensor under this Agreement. Licensor and its supplier's reserve all rights not specifically granted under this License.

1. **GENERAL PROVISIONS**
	1. ASSIGNMENT. The licensee shall not assign or otherwise transfer the Software or this Agreement to anyone, including any parent, subsidiaries, affiliated entities or third parties, or as a part of the sale of any portion of its business, or pursuant to any merger, consolidation or reorganization, without Licensor's prior written consent. Third parties, such as consultants, subcontractors, or agents of licensee who have been contracted by the licensee to implement the Software on Licensee's behalf at licensee's facility, or in a hosting facility, and who have agreed in writing to use the Software only in accordance with the terms and conditions of this license, do not violate this Section 13(a).
	2. TERMINATION. Without prejudice to other rights, Licensor may terminate this licence if Licensee fails to comply with the terms and conditions of the License, provided that prior to any termination Licensor shall have provided written notice to Licensee specifying the nature of such failure to comply and Licensee shall have failed to remedy such failure within [NUMBER] days of receipt of such notice. In such event, Licensee must destroy all copies of the Software and all of its component parts and shall certify in writing to Licensor that such destruction has occurred.
	3. NOTICES. Any notice required or permitted to be sent to a party under this Agreement will be in writing, effective on receipt by that party, and will be sent by overnight carrier, fax, first-class mail or personal delivery to the Address for Notice given for that party below. Either party may change its notice address by giving written notice to the other party at the other party's notice address.
	4. EXPORT. Licensee may not export or re-export the Software to a national of a country in Country Groups E: 1 or E: 2 without a licence or a licence exception from the [COUNTRY] Department of Commerce nor otherwise violate any provision of the [COUNTRY] export laws.

IMPORTANT NOTICE: THIS SOFTWARE OR ANY UNDERLYING INFORMATION OR ANY

UNDERLYING TECHNOLOGY MAY NOT BE DOWNLOADED, DISTRIBUTED OR OTHERWISE

EXPORTED OR RE-EXPORTED OUTSIDE THE [COUNTRY] (OR [COUNTRY]) OR TO ANY

FOREIGN ENTITY OR "FOREIGN PERSON" AS DEFINED BY [COUNTRY]. GOVERNMENT REGULATIONS. INCLUDING WITHOUT LIMITATION ANYONE WHO IS NOT A CITIZEN, NATIONAL, OR LAWFUL PERMANENT RESIDENT OF THE [COUNTRY] OR TO ANYONE ON THE [COUNTRY] TREASURY DEPARTMENT'S LIST OF SPECIALLY DESIGNATED NATIONALS OR ON THE [COUNTRY] COMMERCE DEPARTMENT'S TABLE OF DENIAL ORDERS OR ENTITY LIST, OR INTO (OR TO A NATIONAL OR RESIDENT OF) [SPECIFY COUNTRY. BY DOWNLOADING OR USING THIS SOFTWARE, YOU AND YOUR COMPANY ARE AGREEING TO ABIDE BY THE FOREGOING AND ARE WARRANTING THAT YOU, AND YOUR COMPANY ARE NOT A FOREIGN PERSON OR FOREIGN ENTITY (OTHER THAN A [SPECIFY NATIONALITY] ENTITY) OR UNDER THE CONTROL OF A FOREIGN PERSON OR FOREIGN ENTITY.

* 1. ARBITRATION. Licensor and the Licensee shall settle any controversy arising out of this Agreement by arbitration in the State of [STATE/PROVINCE] in accordance with the rules of the [COUNTRY] Arbitration Association. A single arbitrator shall be agreed upon by Licensor and the Licensee or, if Licensor and the Licensee cannot agree upon an arbitrator within [NUMBER] days, then Licensor and the Licensee agree that a single arbitrator shall be appointed by the [COUNTRY] Arbitration Association. The arbitrator may award attorneys' fees and costs as part of the award. The award of the arbitrator shall be binding and may be entered as a judgement  in any court of competent jurisdiction. The arbitrator shall not have the power to award non-monetary, injunctive or equitable relief of any sort, which may be sought in court as provided in section 13(l), in addition to any other legal remedies that may be available hereunder.
	2. COMPLETE AGREEMENT. Licensor and the Licensee agree that this Agreement is the complete and exclusive statement of the agreement between Licensor and the Licensee, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the Licensor and the Licensee relating to this Agreement.
	3. AMENDMENT. This Agreement may not be modified, altered or amended except by written instrument duly executed by both Licensor and the Licensee.
	4. WAIVER. The waiver or failure of either Licensor or the Licensee to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement. Any waiver must be in writing, signed by the party waiving its rights.
	5. SEVERABILITY. If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or the rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.
	6. RECORDS INSPECTION. Upon three business days written notice, Licensee shall allow Licensor and/or its agents to inspect and audit all of Licensee's records, in any media, relating to the Software and this Agreement, at the Licensee's regular place of business and at such reasonable times as shall not disrupt Licensee's business operations, to confirm Licensee's compliance with its obligations hereunder. If such inspection and/or audit discloses that Licensee has not complied with its obligations, Licensee shall bear the full cost of the inspection and audit, in addition to any other rights [SPECIFY] may have hereunder.
	7. GOVERNING LAW. This agreement and performance hereunder shall be governed by the laws of the [COUNTRY] without regard to conflict of law principles. Any Dispute shall be resolved in the [COUNTRY], and Licensee submits to the personal jurisdiction in the [COUNTRY] of the arbitrator and/or the [COUNTRY] court, as appropriate under the Agreement.

IN WITNESS WHEREOF, by virtue of accepting the Software by electronic means, downloading, installing the Software, or by using the Software in any way, the parties hereto have caused this [SOFTWARE NAME](TM) licence to be executed and consider this AGREEMENT to be effective as of the day and year the software was acquired.

LICENSOR LICENSEE

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title