

**PKWARE, INC. MASTER LICENSE AGREEMENT**  
**(Smartcrypt: IBM i and z/OS)**

This License Agreement ("Agreement") is made by and between Licensor and Licensee, as defined below.

BY ACCESSING, USING, OR INSTALLING ALL OR ANY PART OF THE SOFTWARE, AS DEFINED BELOW, LICENSEE EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT, INCLUSIVE OF ALL SCHEDULES AND EXHIBITS HERETO. IF LICENSEE DOES NOT AGREE TO ANY PART OF THIS AGREEMENT AND DOES NOT WISH TO BE BOUND BY THIS AGREEMENT, LICENSEE MAY NOT ACCESS, USE OR INSTALL ALL OR ANY PART OF THE SOFTWARE.

This Agreement consists of Part 1 – Software License and General Terms, and Part 2 – Maintenance and Support Terms. This Agreement is the complete agreement regarding the subject matter hereof, and replaces any prior oral or written communications or agreements between Licensee and Licensor.

**PART 1 - SOFTWARE LICENSE AND GENERAL TERMS**

**1. DEFINITIONS**

**"Authorized Machine"** means each computer (a) which is owned or operated by or on behalf of Licensee and operated at an Authorized Site, and (b) which is identified in the Order to the extent applicable to the Software.

**"Authorized Site"** means the physical location identified in the Order to the extent applicable to the Software at which Licensee may install and use the Software on an Authorized Machine.

**"Documentation"** means all written and electronic information generally made available by Licensor to its customers relating to the operation and functionality of the Software, including user manuals, installation guides, and any "read me" or "help" files.

**"Effective Date"** means the date upon which this Agreement becomes effective as identified in the portion of the Order applicable to the Software.

**"Licensee"** means the entity licensing the Software as identified in the Order. The term Licensee shall include any subsidiary, affiliate or other entity which (i) Licensee consolidates into its audited financial statements; and (ii) is at least fifty percent (50%) owned by Licensee (an "Affiliate"), provided that: (a) Licensee shall not include any Affiliate which competes with Licensor, and (b) Licensee shall remain responsible for compliance with this Agreement by each such Affiliate.

**"Licensor"** means PKWARE, Inc.

**"Order"** means: either (a) a valid purchase order accepted by Licensor; (b) Licensor's valid quote accepted in writing by Licensee; (c) an attachment to this Agreement issued by Licensor listing the Authorized Machine(s); or (d) a receipt for purchases from Licensor authorized online stores. The terms of this Agreement and the Order shall govern except to the extent expressly set forth to the contrary in any subsequent written agreement executed by both Licensor and Licensee. Any language or terms contained on a Purchase Order or other document from Licensee contrary or in addition to the terms of the Order or this Agreement shall be void and of no effect.

**"Self-Extracting File(s)"** means an executable file created using the Software which includes object code to uncompress and/or decrypt upon being opened. A Self-Extracting File may include ".exe" as the extension to its file name.

**"Software"** means the object code version of the software program(s) identified on the Order, and associated Documentation.

**2. LICENSE**

**2.1 License Grant.** In consideration of the applicable license fee, Licensor grants to Licensee a perpetual, non-transferable (except as permitted herein), non-exclusive, license to install and use the Software specified in the applicable Order only for its own internal business purposes unless otherwise mutually agreed by the parties in writing. The aforementioned license extends solely to the installation and use of the Software on the Authorized Machine(s) at the Authorized Site(s).

**2.2 Non-production Usage.** Licensee is permitted, at no additional cost, to make a reasonable number of copies of the Software only for non-production archival or cold-backup purposes. Such copies may only be installed to minimize interruption and/or replace the production installation of the Software in the event such installation is damaged or destroyed due to disaster. Licensee will ensure that each copy, if contained on physical media, includes Licensor's copyright and other proprietary notices as they appear on the Software provided by Licensor. Licensee will pay all applicable license and maintenance fees to Licensor if it installs, as a course of its business, any non-production, disaster-recovery (aka "hot backup" or "failover") and/or test/development copies of the Software.

**2.3 Restrictions on Use.** Licensee acknowledges and agrees that the Software is copyrighted material proprietary to Licensor, and that Licensee may not, except as expressly provided in this Agreement or by law: (i) copy, modify, alter, translate, decompile, disassemble, reverse engineer, or create derivative works of the Software; (ii) remove, alter or cause not to be displayed any copyright notice or start-up message contained in the Software program(s); (iii) use the Software or any part thereof directly or indirectly to create a product competitive with any of Licensor's products; (iv) display and/or allow access to the Software by any third party, except for Licensee's consultants, provided that such consultant-access is exclusively on behalf of Licensee's internal business and the consultant is bound in writing to comply with Licensee's restrictions and obligations herein; or (v) sell, loan, rent, lease, sublease, give, sublicense, use as part of a service bureau or data center operation, or otherwise transfer the Software or any copy or modification thereof, in whole or in part, to any person except as provided herein. Additionally,

Licensee shall be fully responsible for the acts and omissions of any of its consultants with respect to the Software as if each were an employee of Licensee. Notwithstanding the foregoing, in the event Licensee operates either (a) a service bureau and in consideration of any additional fees that may apply, Licensee may use the Software in connection with its operation of such service bureau business, including where the Software facilitates the operation of services offered to Licensee's service bureau customers, provided that Licensee may not offer the functions of the Software itself to such customers; or (b) a data center outsourcing business, Licensee must identify separately (by completing an appropriate exhibit provided by Licensor for this purpose) each outsourcing customer (an "Authorized Client") on whose behalf Licensee desires the right to install and use the Software. Upon execution of such exhibit by the parties and Licensee's payment of the applicable outsourcer license fees, both the Authorized Client(s), as identified in the duly executed exhibit, and Licensee may use the Software as properly offered through Licensee's data center outsourcing business for Authorized Client's internal business purposes only.

**2.4 Restrictions on Distribution of Self-Extracting Files.** Unless otherwise provided in an Order, Licensee may only use the Software to create Self-Extracting Files for Licensee's internal use and specifically may not sell, transfer, assign, license, or otherwise distribute to any third party any Self-Extracting File created through use of the Software where Licensee derives any compensation, in whatever form, or any commercial gain whatsoever. For the sake of clarity, nothing herein prevents Licensee from sending non-Self-Extracting Files (e.g. zipped files) to external recipients in the normal course of Licensee's business.

**2.5 Acknowledgment and Reservation of Rights.** Licensee acknowledges and agrees that Licensor and its licensors own all intellectual property and other proprietary rights in and to the Software and that all rights not expressly granted herein are reserved to Licensor.

**2.6 Compliance.** Upon written request by Licensor, Licensee shall submit to Licensor a statement of compliance confirming Licensee's compliance with its obligations under this Agreement.

**2.7 Audit Right.** Licensee shall maintain true, complete, and correct copies of books and records reflecting the location and use of each copy of the Software in Licensee's possession or control. On at least thirty (30) days prior written notice to Licensee, but no more frequently than once in any twelve (12) month period, for any reason, Licensor at its expense and through its agents shall be entitled to audit such records and systems of Licensee as Licensor may reasonably request in order to determine Licensee's use of the Software pursuant to this Agreement.

### **3. FEES**

**3.1** Licensee shall pay license (and, to the extent applicable, maintenance) fees to Licensor in the amount and according to the terms set forth in the Order. Thereafter, maintenance fees shall be due annually on the anniversary of the start date of the Maintenance Term. Payment of any fees hereunder shall be made in a form acceptable to Licensor in U.S. dollars or in such other currency as may be acceptable to Licensor. All costs of payment (such as wire transfer fees) shall be the obligation of Licensee. Licensee is solely responsible for any and all taxes, duties, fees or other charges imposed on or associated with the transaction(s) contemplated in this Agreement.

**3.2** All license and maintenance fees payable under this Agreement shall be due and payable on a net 30 days basis from date of invoice. The non-payment when due of any license fee set forth in the Order shall constitute a material breach of this Agreement. Any non-payment when due of any maintenance fee set forth in the Order shall constitute a material breach of the Maintenance and Support portion of this Agreement. Any sums not paid when due shall accrue interest at a rate of 1.5% per month or the maximum rate allowed by law, whichever is less, from the date first due. Licensee also shall be responsible for any and all costs of collection, including actual attorneys' fees, for any sums not paid when due.

**3.3** In the event Licensee opts to move the Software from one Authorized Machine to another machine with a greater capacity (a "Hardware Upgrade") it may do so, provided Licensee (a) is a current Software maintenance and support customer and (b) pays the applicable license and maintenance fees for such Hardware Upgrade. Upon the payment of such fees, the machine shall be considered the currently licensed Authorized Machine for purposes of this Agreement.

**3.4** Upon payment in full of all license fees for the Software, Licensor shall issue keys allowing Licensee to execute the Software on the Authorized Machine(s). If Licensee chooses to receive maintenance and support for the Software and pays the required maintenance fee during the Maintenance Term, Licensor shall issue key(s) to Licensee upon request for supported versions of the Software allowing Licensee to execute the Software on a substitute machine(s) of an equal or lesser average capacity in lieu of the Authorized Machine(s) and/or Authorized Site.

### **4. TERM AND TERMINATION**

**4.1 Term.** The term of this Agreement shall commence as of the Effective Date and continue in perpetuity unless otherwise provided in the Order or until terminated earlier as provided hereunder. If an Order provides for a particular term, the Agreement shall automatically renew after the end of the term provided in the Order for successive one (1) year renewal terms, provided that, prior to the commencement of a renewal term, Licensee pays Licensor such fees as Licensor and Licensee may agree. If the parties cannot reach agreement on such fees, the term shall not renew.

**4.2 Termination by Licensee.** Licensee may terminate this Agreement at any time, with or without cause, upon written notice to Licensor provided Licensee is in compliance with all of its obligations hereunder. Except as expressly provided herein, Licensee shall not be entitled to any refund of any fees paid hereunder upon termination of this Agreement.

**4.3 Termination by Licensor.** Licensor may terminate this Agreement upon written notice of termination for breach to Licensee if Licensee materially breaches any term of this Agreement and fails to cure such material breach to Licensor's reasonable satisfaction within thirty (30) days of receipt of notice of intent to terminate for breach from Licensor. Notwithstanding the generality of the foregoing, if, in Licensor's reasonable

judgment, Licensee's breach materially infringes or impairs Licensor's intellectual property or other proprietary rights in the Software, Licensor may terminate this Agreement immediately.

**4.4 Actions on Termination, Cancellation, or Expiration.** Upon termination of this Agreement with or without cause pursuant to Sections 4.2 and 4.3 above, its cancellation pursuant to Section 5.1 below, or its expiration in the case of a limited term license, all licenses granted herein shall immediately terminate. Upon either termination of this Agreement or expiration of a limited term license governed by this Agreement, Licensee shall immediately (a) discontinue any and all use of the Software, (b) uninstall and destroy any and all physical or electronic copies of the Software, and (c) deliver written certification, executed by an officer of Licensee, stating that Licensee has complied with this section, to Licensor within twenty (20) days of such termination, cancellation, or expiration. Except as expressly set forth in Section 5 below, under no circumstances shall Licensee be entitled to any refund or return of fees upon termination, cancellation, or expiration of this Agreement.

**4.5 Surviving Rights.** All provisions of this Agreement which by their nature are intended to survive the expiration or termination of this Agreement shall survive and remain in full force and effect, including but not limited to the restrictions and obligations set forth in Sections 2.3, 2.4, 2.5, 2.6, 2.7, 3.1, 3.2, 4.2, 4.3, 4.4, 5.3, 5.5, 6 and 7 of Part 1 of this Agreement. In the event of the termination of Licensee's maintenance and support of a perpetual license for the Software and provided Licensee is not in breach of the Agreement, the terms of this Agreement shall remain in full force and effect except for Part 2 of this Agreement and any related maintenance and support terms.

## **5. LIMITED WARRANTY, DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

**5.1 Limited Money Back Software Warranty.** Licensee shall have thirty (30) days from the Effective Date of the initial term of this Agreement (the "Warranty Period") to test the Software to its satisfaction. If Licensee is not fully satisfied with the Software, Licensee may, within the Warranty Period, return the Software to Licensor for a full refund of any license and maintenance fees actually received by Licensor from Licensee pursuant to this Agreement. Upon such return, this Agreement shall immediately terminate in accordance with the terms of Section 4.4 of this Agreement.

Licensor agrees to pass through to Licensee all warranties provided to Licensor by third parties relating to any third party software embedded in the Software or otherwise licensed or provided to Licensee by Licensor hereunder. Notwithstanding the foregoing, in the event Software contains any software code developed by third parties and licensed pursuant to either the GNU General Public License or the GNU Lesser General Public License such code is supplied without warranty of any kind.

**5.2 Maintenance and Support Limited Warranty.** Licensor warrants that the maintenance and support services provided hereunder shall be performed in a professional and workmanlike manner in accordance with the generally accepted industry standards.

**5.3 DISCLAIMER OF WARRANTIES. LICENSEE IS SOLELY RESPONSIBLE FOR INSTALLATION AND CONFIGURATION OF THE SOFTWARE. THE WARRANTIES SET FORTH ABOVE ARE LICENSOR'S EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES OR REPRESENTATIONS ARE PROVIDED WITH RESPECT TO THE SOFTWARE, THE MAINTENANCE AND SUPPORT, OR OTHERWISE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL BE FREE FROM PROGRAM ERRORS.**

**5.4 Legal Rights.** The foregoing limited warranties give Licensee specific legal rights and Licensee may have other rights which vary from state to state and jurisdiction to jurisdiction. Some states and jurisdictions may not allow limits on how long an implied warranty lasts. In those cases, the above limits may not apply to Licensee.

**5.5 LIMITATION OF LIABILITY. LICENSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, OR FOR ANY ECONOMIC OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR SAVINGS), EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW EXCLUSION OR LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO LICENSEE.**

Licensor will not be liable for (a) loss of, or damage to, the records or data of Licensee or any other party, or (b) any damages claimed by Licensee based on any third party claim.

**UNDER NO CIRCUMSTANCES SHALL LICENSOR'S TOTAL LIABILITY TO LICENSEE OR ANY OTHER PARTY WITH RESPECT TO THE SOFTWARE OR OTHERWISE RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF FOR DIRECT DAMAGES EXCEED THE GREATER OF U.S. \$100,000 OR THE TOTAL FEES PAID BY LICENSEE UNDER THE AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING ANY CLAIM.**

The limitations, exclusions and disclaimers set forth in this Section 5 shall apply to the maximum extent permitted by applicable law, even if any remedy fails of its essential purpose. Except to the degree such service is covered by maintenance, no obligation or liability shall arise from Licensor's rendering of technical or other advice or service in connection with this Agreement, including, without limitation, advice or service related to the installation or configuration of the Software.

## **6. CONFIDENTIALITY**

"Confidential Information" means the Software and/or any information relating to or disclosed in the course of the Agreement, which is or should be reasonably understood to be confidential or proprietary to Licensor. Confidential Information shall not include information (a) already lawfully known to the Licensee, (b) disclosed in published materials without fault of Licensee, (c) generally known to the public without fault of the Licensee, (d) lawfully obtained from a third party not under any obligation to maintain the confidentiality of Licensor, (e) required by applicable law or regulations to be released, or (f) independently developed by Licensee, provided the person or persons developing the same have not had

access to relevant proprietary information of Licensor. Licensee agrees that the Confidential Information of Licensor shall be held in strict confidence and shall not be used by or disclosed to third parties without the prior written consent of Licensor. Notwithstanding anything to the contrary herein, the confidentiality obligations set forth in this Agreement shall survive the termination, cancellation, or expiration of this Agreement.

## 7. MISCELLANEOUS PROVISIONS

**7.1 Severability.** The provisions of this Agreement and the attached schedules are severable. If any provision of this Agreement or any schedule attached hereto is held to be invalid, illegal, or unenforceable, such provision is to that extent deemed omitted and not part of this Agreement. The validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired thereby and shall be valid and enforceable to the maximum extent permitted by law.

**7.2 Assignment.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, Licensee shall not assign, sublicense, subcontract, or otherwise transfer this Agreement, the license granted hereunder, or any of its other rights or obligations under this Agreement or delegate any of its duties under this Agreement without the prior written consent of Licensor, which consent shall not be unreasonably withheld.

**7.3 Governing Law and Forum Choice.** This Agreement shall be construed as having been made in, and shall be governed in accordance with, the laws of the State of Wisconsin if Licensee acquires the Software in the United States, without regard to that state's choice of law rules or conflict of law provisions. Any legal action brought concerning this Agreement or any dispute arising from any act or omission arising from this Agreement shall be brought only in the courts of the state of Wisconsin in the County of Milwaukee or in the federal courts located in such state and county, and both parties agree to submit to the jurisdiction of these courts.

If Licensee acquires the Software outside of the United States, the laws of the country in which Licensee acquires the Software govern this Agreement, except (a) in Australia, the laws of the State or Territory in which the transaction is performed govern this Agreement; (b) in Albania, Armenia, Belarus, Bosnia/Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kazakhstan, Kirghizia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, Ukraine, and Federal Republic of Yugoslavia, the laws of Austria govern this Agreement; (c) in the United Kingdom, all disputes relating to this Agreement will be governed by English Law and will be submitted to the exclusive jurisdiction of the English courts; (d) in Canada, the laws in the Province of Ontario govern this Agreement; and (e) in Puerto Rico, and the People's Republic of China, the laws of the State of New York govern this Agreement.

**7.4 Export Restrictions.** Licensee agrees to comply with all applicable export laws and regulations.

**7.5 US Government Restricted Rights.** The Software is provided with RESTRICTED AND LIMITED RIGHTS. Use, duplication, or disclosure by the US Government or any of its agencies is subject to restrictions as set forth in FAR 52.227-14, Alternate III(g)(3), FAR 52.227-19(c), or DFARS 252.227-7013(c)(1)(ii), as applicable.

**7.6 Entire Agreement.** This Agreement, inclusive of the Schedules and Addenda, if any, attached hereto, constitutes the exclusive and entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof between Licensor and Licensee.

**7.7 Modification and Waiver.** No modification of this Agreement or any Schedule or Addendum and no waiver of any breach of this Agreement shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver of any breach of this Agreement and no course of dealing between the parties shall be construed as a waiver of any subsequent breach of this Agreement. The failure of either party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce such provision.

**7.8 Force Majeure.** Neither party shall be responsible for failure to fulfill any obligations due to causes beyond its control including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with any applicable law, regulation, or order (whether valid or invalid) of any governmental body, except that such causes shall not extend the due date for, or excuse the timely payment of, any amounts payable by a party hereunder.

**7.9 Notice.** Any notice, request, instruction or other document or communications to be given hereunder by either party to the other shall be in writing, and delivered via email, personally, overnight courier, express mail, or certified mail – return receipt requested, postage prepaid (such notice to be effective on the date receipt is signed by the receiving party). Notices to Licensee shall be sent to either the address set forth in the applicable Order or to such other address as Licensee shall designate by written notice to Licensor. Notices to Licensor shall be sent to either the following address or to such other address as Licensor shall designate by written notice to Licensee: PKWARE, INC., Attn: Legal Administrator, 201 E. Pittsburgh Ave., Suite 400, Milwaukee, WI 53204, legal@pkware.com

## PART 2 - MAINTENANCE AND SUPPORT

Maintenance and Support will be available to Licensee if Licensee is current on all maintenance payments with Licensor and Licensee is running a currently supported version(s) of the Software. Licensor reserves the right to increase the annual maintenance fee applicable to the Software by an amount not to exceed five percent (5%) per year.

**8. DEFINITIONS.** For purposes of Part 2 of this Agreement:

**“Business Hours”** means the hours from 8:00 a.m. through 6:00 p.m., Monday through Friday (excluding Licensor’s holidays) in either the United States Eastern Time Zone or the Central European Time Zone, whichever is closest in proximity to the Licensee.

**“Error Condition”** means any demonstrable, reproducible defect, program error, or other non-conformance of the Software with its Documentation caused solely by errors or defects in the code of the Software.

**“Maintenance Term”** means, initially, the Maintenance Term identified in the Order. Upon expiration of the initial Maintenance Term, the Maintenance Term shall automatically renew for additional one (1) year periods unless terminated earlier by either party, at its option, by written notice at least sixty (60) days prior to the end of the then-current Maintenance Term. The Maintenance Term shall immediately terminate upon the termination, expiration, or cancellation of this Agreement for any reason.

**“New Version”** means a complete replacement of the executable code of the Software in machine-readable form, to provide significant new features or functions. A New Version may incorporate one or more enhancements. A New Version involves only such enhancements that change the version number immediately to the left of the decimal point. Changes to the version number are made solely at the discretion of the Licensor.

**“New Release”** means a partial or complete replacement of the executable code of the Software in machine-readable form, which may provide new features or functions. A New Release may incorporate some or no enhancements. A New Release involves only such alterations that change the release number to the immediate right of the decimal point. Changes to the release number are made solely at the discretion of the Licensor.

**“Modification”** means a partial or complete replacement of the executable code of the Software in machine-readable form which provides product function or correction that is delivered outside the standard announced “New Version” and “New Release” delivery methods.

**“Pre-Release Change”** means any enhancement, the development or testing of which is not yet completed, such that it is not yet generally released to Licensor’s customers.

**“Nonqualified Product”** means any product not listed as compatible with Software in Licensor’s promotional materials.

## 9. MAINTENANCE TERM

Licensor agrees to provide maintenance and support for the Latest Versions of the Software pursuant to the terms of this Part 2 during the Maintenance Term, provided the maintenance fee is fully paid and current and Licensee is also in full compliance and current with all of its other obligations under this Agreement. “Latest Versions” means versions of Software used for the fulfillment of new license orders and/or the versions for which Licensor continues to provide technical support. Latest Versions are specified in the Support section of Licensor’s web site.

## 10. SUPPORT

**10.1 Non Error Condition Support.** During the Maintenance Term, Licensor shall provide support for non-Error Condition-related questions regarding the Software by e-mail, telephone, telefax or online consultation during Business Hours.

**10.2 Error Condition Support.** During the Maintenance Term, Licensor shall provide support for reporting and resolving Error Conditions through the standard support line during Business Hours.

**10.3** Regardless of the nature of the Error Condition, Licensor may provide a resolution in the form of a Pre-Release Change, a Modification, or such other information, instructions or patches as are sufficient to eliminate or reduce the Error Condition.

**10.4** Licensee agrees to promptly notify Licensor in writing following the discovery of any Error Condition. Further, upon discovery of an Error Condition, and at the request of Licensor, Licensee agrees to submit a listing of output and any other information that Licensor may require in order to reproduce the Error Condition and/or the operating conditions under which the Error Condition occurred or was discovered.

**10.5** Licensee agrees to acquire, install and/or implement as directed, certain services, hardware, software, software versions, releases, and the like, as may be deemed necessary by Licensor from time to time for proper operation of the Software. Such items may be at an additional cost for which Licensee is financially responsible.

**10.6** Licensee is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and to obtain support from Licensor. Licensor shall not be responsible for delays or inability to provide maintenance or support caused by events or circumstances beyond its reasonable control.

**10.7 Exceptions.** The following matters are not covered by Licensor’s maintenance and support obligations hereunder: (a) problems resulting from misuse, improper use, or damage of the Software, to the extent caused by Licensee, provided that Licensee’s actions were not directed by Licensor or set forth in the Documentation; (b) problems resulting from any unauthorized modification made to the Software, but only to the extent of such modification; and (c) problems resulting from any Nonqualified Product or from failure of equipment.

If Licensor provides support services for a problem caused by a Nonqualified Product, or from failure of equipment, Licensor will charge on a time and materials basis for such extra service at its then current rates for customer support services. If, in Licensor’s opinion, performance of any support hereunder is made more difficult or impaired because of Nonqualified Products, Licensor shall so notify Licensee, and Licensee will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render support hereunder. Licensee shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Software.

**10.8 Licensee’s Responsibilities.** In connection with Licensor’s provision of support hereunder, Licensee acknowledges that Licensee has the responsibility to do each of the following with respect to the Software: (a) maintain the designated computer system and associated peripheral equipment in good working order in accordance with the manufacturers’ specifications; (b) maintain the designated computer system at a supported revision level prescribed by the Documentation for proper operation of the Software; (c) perform any tests or procedures recommended

by Licensor for the purpose of identifying and/or resolving any problems submitted by Licensee for servicing under the terms of this Agreement; (d) maintain a procedure external to the Software for reconstruction of lost or altered files, data, or programs to the extent deemed necessary by Licensee; (e) at all times follow routine operator procedures as specified in the Documentation; and (f) provide all information in American English in a form discernible by Licensor.

## **11. MAINTENANCE**

**11.1 Data Format/Content Changes.** If the format and/or content of raw data which is processed by the Software changes as a result of vendor changes in the operating system and sub-systems which create the data, Licensor agrees to provide for the continued compatibility of the Software. Licensor will make necessary corrections to the Latest Version(s), at Licensor's sole option. Licensor has no obligation to modify prior versions of the Software (i.e. non-Latest Versions) to run with the latest versions of operating systems, software, or hardware.

**11.2 Modifications and New Releases.** Provided Licensee is current on all of its obligations pursuant to the Agreement and any Schedules attached thereto, during the Maintenance Term, Licensor shall provide to Licensee at no additional charge all Modifications and New Releases to the Software, the schedule, nature, and scope of which shall be in the Licensor's sole discretion.

**11.3 New Versions.** Licensee may choose to license New Versions of the Software at the time of their availability under the terms and conditions of the Agreement and its attached Schedules, subject to the applicable pricing for such New Versions as set forth by Licensor in an appropriate supplement or Order executed by the parties. Licensee is under no obligation to license any such New Versions.

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